REAUTHORIZATION OF THE ADAM WALSH ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

FEBRUARY 15, 2011

Serial No. 112–12

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE
64–584 PDF WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

LAMAR SMITH, Texas, *Chairman*

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM REED, New York
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
BEN QUAYLE, Arizona

JOHN CONYERS, JR., Michigan
HOWARD L. BERMAN, California
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA T. SÁNCHEZ, California
DEBBIE WASSERMAN SCHULTZ, Florida

SEAN MCLAUGHLIN, *Majority Chief of Staff and General Counsel*
PERRY APELBAUM, *Minority Staff Director and Chief Counsel*

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

F. JAMES SENSENBRENNER, JR., Wisconsin, *Chairman*
LOUIE GOHMERT, Texas, *Vice-Chairman*

BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
J. RANDY FORBES, Virginia
TED POE, Texas
JASON CHAFFETZ, Utah
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
SANDY ADAMS, Florida
BEN QUAYLE, Arizona

ROBERT C. "BOBBY" SCOTT, Virginia
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO PIERLUISI, Puerto Rico
JUDY CHU, California
TED DEUTCH, Florida
DEBBIE WASSERMAN SCHULTZ, Florida
SHEILA JACKSON LEE, Texas
MIKE QUIGLEY, Illinois

CAROLINE LYNCH, *Chief Counsel*
BOBBY VASSAR, *Minority Counsel*

CONTENTS

FEBRUARY 15, 2011

REAUTHORIZATION OF THE ADAM WALSH ACT

TUESDAY, FEBRUARY 15, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10 a.m., in room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner (Chairman of the Subcommittee) presiding.

Present: Representatives Sensenbrenner, Conyers, Goodlatte, Lungren, Gohmert, Poe, Griffin, Marino, Gowdy, Adams, Quayle, Scott, Jackson Lee, Johnson, Quigley, Chu, and Wasserman Schultz.

Staff Present: (Majority) Caroline Lynch, Subcommittee Chief Counsel; Sam Ramer, Counsel, Lindsay Hamilton, Clerk; (Minority) Bobby Vassar, Subcommittee Chief Counsel; Lilliana Coronado, Counsel; and Veronica Elligan, Professional Staff Member.

Mr. SENSENBRENNER. The Subcommittee will come to order.

Welcome to today's hearing on the Adam Walsh Reauthorization Act. I would like to especially welcome our witnesses and thank you for joining us today.

I am joined today by my colleague from Virginia, the distinguished Ranking Member of the Subcommittee, Bobby Scott, also the Chairman emeritus, John Conyers of Michigan. And I recognize myself for 5 minutes.

Today's hearing examines the role of the Adam Walsh Child Protection and Safety Act as a law enforcement tool to apprehend sex offenders throughout the United States. This Act was named for Adam Walsh, a Florida boy who was abducted from a shopping mall and later found murdered. His father channeled his grief into assisting law enforcement with the pursuit and capture of the most dangerous criminals this country faces.

As Chairman of the House Judiciary Committee in the 109th Congress, I made the adoption of this Act a priority. President Bush signed it into law on July 27, 2006. As Chairman of the Crime Subcommittee in this Congress, I am committed to reauthorizing this important legislation and seeing that it is fully implemented.

A primary component of the Act is the Sex Offender Registration and Notification Act, or SORNA. SORNA establishes a comprehensive national system for the registration and notification to the

public of sex offenders. Under SORNA, sex offenders are organized into three tiers, with the most serious offenders required to register their whereabouts every 3 months with lifetime registration.

SORNA also establishes a national database to incorporate the use of DNA evidence collection and DNA registry and tracking of convicted sex offenders with GPS technology. The law also increased criminal penalties for child exploitation offenses and authorized additional grant money to assist State and local law enforcement, with SORNA compliance, to combat child sex abuse and to assist with fugitive apprehension.

The Act also created the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, or SMART. The responsibilities of the SMART Office include providing jurisdictions with guidance regarding the implementation of the Adam Walsh Act and providing technical assistance to the States, territories, Indian tribes, local governments, and to public and private organizations. The SMART Office also tracks important legislative and legal developments relating to sex offenders and administers grant programs relating to the registration, notification, and management of sex offenders.

Thanks to the Adam Walsh Act, we have begun to make progress against thousands of sex offenders whose whereabouts are unknown. The U.S. Marshals, who bear the primary responsibility for finding these offenders, have been able to clear over 6,000 cases, with hundreds of offenders eventually convicted of failing to register.

I would like to remind the Committee Members that this Act has been challenged in court several times and has been found to be constitutional in every respect. Claims that the law violates due process and claims against retroactivity of the law have been examined in many courts and rejected. This is a fair program, and the goals it seeks comport with the fundamental notions of liberty and federalism. Yet much more remains to be done.

I am not pleased with the rate of compliance with the SORNA provisions. The original compliance date was July 2009, with the ability of jurisdictions to receive two 1-year extensions to July of this year. In that time, only five States, two Indian tribes, and the territory of Guam have been certified to be in compliance with the law. The remaining States and other tribes and territories have had ample time to come into compliance with the Act. In fact, the deadline for compliance for these States has already been extended significantly. I have heard that many States may be close to compliance with the law, and I hope that that is the case as the deadline for compliance fast approaches.

As law enforcement officers seek to investigate serial sex offenders, they are often frustrated to find different States have different ways of categorizing them. The whole purpose of the Act was to make it easier to track these offenders, yet many of the same problems remain because so many States have failed to fully comply with the law. I am eager to hear from the Justice Department why so many jurisdictions have not complied.

The Adam Walsh Act is vital to apprehending sex offenders and to protecting our children, and I intend to see that it is fully implemented.

I wish to welcome our witnesses today and thank you for joining us today.

It is now my pleasure to recognize for his opening statement the Ranking Member of the Subcommittee, the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I am pleased to join you for this Subcommittee hearing on the Reauthorization of the Adam Walsh Act.

It has been over 4½ years since the passage of the Act. And when it originally passed, I opposed it because it increased mandatory minimum sentences, it added creation of new Federal criminal offenses on top of a myriad of existing and growing State offenses, it criminalized probably innocuous behavior by teenagers, and it created a National Sex Registry, which has not shown value in its stated goal of reducing sexual assault.

Since its passage, jurisdictions subject to the requirements under the Act have told us that there are a number of problems and challenges with implementing the Act. In particular, the Sex Offender Registration and Notification part of the Act, referred to as SORNA, has proven to be unworkable for the vast majority of these jurisdictions. SORNA requires that individuals convicted of sex offenses register for a period of 15 years to life for conduct ranging from a misdemeanor solicitation offense to felony sexual assault. Even among the few States that have been certified as having met the requirements of these provisions, we are seeing reports of problems and difficult challenges, particularly given the budgetary constraints facing all of the country at this time.

In short, SORNA is facing a crisis. As of a few days ago, since nearly 5 years after the passage of the Act, I had only four States had been qualified, two tribes and one territory have been found to be in compliance with SORNA. The remaining 241 jurisdictions face an unjustified and harsh tax on their Byrne Grant funding, because if they don't comply they will lose some of that funding. As we know, the Byrne Grant monies are used to fund essential State and local programs, such as law enforcement and other community programs. It would be a double disaster for States to lose these monies for not being able to afford to implement the requirements due to their current severe budget shortfalls.

Instead, we should consider the feedback that we will hear today and that we have been provided over the past years, and that is to earnestly seek the legitimate concerns that have been raised. Some of the feedback came to us by way of previous hearings on SORNA.

In March 2009, when I was Chairman of the Committee, we convened a hearing on barriers on implementing SORNA. Nearly 2 years later, many of these barriers that we heard at that hearing still exist. These include the high costs associated with implementation, the challenges that require juveniles to register posts for the States, including pending legal challenges; and both the legal and practical challenges with SORNA's retroactivity requirement, the whole-scale reclassification of sex offenders; and for Indian tribes, specific challenges, including the loss of sovereignty if the tribes do not comply. At that hearing, we heard testimony from various

State and local law enforcement officials addressing each of these challenges. Unfortunately, many of these obstacles still exist.

One such obstacle continues to be the requirement that juveniles as young as 14 years of age be placed upon the registry. Despite that, this registration requirement is limited to the most serious cases, and just this year the Attorney General gave jurisdictions discretion to make juveniles nonpublic. Numerous States are still having difficulty with this component due to legal challenges, considerable pressure from advocates and child development experts, and State legislators' discomfort with placing juveniles on a registry.

Another continuing impediment to this implementation is SORNA's failure to allow for an actual risk assessment component to State registries. SORNA does not allow States to use risk assessment tools in developing its registry, which has posed a problem particularly in those States that had longstanding, effective State registries that used risk assessment tools long before SORNA. These States must completely alter their systems, which is costly, and some will face a legal challenge in so doing. Research indicates that the risk assessment is an effective way to monitor offenders. We should all prefer a tool that helps determine who is actually at risk of committing another offense, rather than just telling us who committed one in the past. Failing to distinguish between the two defeats the purpose of the registry and makes us actually less safe, not more safe.

Tribes continue to face unique and compelling difficulties in implementing SORNA. Out of 192 tribes who have opted into SORNA, only two have been found to be in compliance. As many of us know, tribes suffer from high poverty rates and struggle with budgetary issues. In addition to losing much needed Byrne Grant funds, tribes face even more serious penalties should they fail to implement SORNA. This public function will involuntarily be delegated to the State in which a tribe is located. States will then have to take on the additional responsibility, when they are already struggling to implement their own registries, without putting them in the difficult position of encroaching upon tribal sovereignty. In light of the double penalty that tribes face, the burden that SORNA imposes on them is onerous.

The cost of the barrier of implementing SORNA is a major barrier. For example, California has estimated that the potential cost to implement SORNA will be approximately $37 million. Texas says $14 million will be needed to implement SORNA. These numbers do not only pose a tremendous burden on the States, but also ask us to inquire whether it is worth the money. Are the States going to get a good return on their investment? And while we will do whatever it takes to protect our children, we must ask ourselves, are sex offender registries effective? Available research tells us that sex offender registers do not actually reduce the number of sexual assaults. This includes a DOJ study——

Mr. SENSENBRENNER. The gentleman is about 1 minute over his time. Can he wrap up, please?

Mr. SCOTT. This includes a DOJ study funded under Megan's Law, the predecessor of SORNA.

I will insert the rest of my statement in the record.

[The prepared statement of Mr. Scott follows:]

Prepared Statement of the Honorable Robert C. "Bobby" Scott, a Representative in Congress from the State of Virginia, and Ranking Member, Subcommittee on Crime, Terrorism, and Homeland Security

Thank you, Mr. Chairman. I am pleased to join you for this Crime Subcommittee hearing on "Reauthorization of the Adam Walsh Act." It has been over four and a half years since the passage of the Adam Walsh Act. I opposed the Adam Walsh Act for myriad reasons, including the increases in mandatory minimum sentences, creation of new federal criminal offenses, on top of the myriad of existing and growing state offenses, criminalization of innocuous behavior by teenagers, and the creation of an onerous national sex offender registry of questionable merit or value to its stated goal of reducing sexual assault.

Since its passage, jurisdictions subject to requirements under the Act have told us about a number of problems and challenges with implementing the Act. In particular, the Sex Offender Notification and Registration part of the Act, referred to as SORNA, is proving to be unworkable for the vast majority of these jurisdictions (states, territories, and tribes). And even among the few who have been certified as having met the requirements of those provisions, we are seeing reports of problems and difficult challenges, particularly given the budgetary constraints facing all of the country at this time.

Given these problems, I hope that we use today's hearing to learn how we can best assist them in addressing the challenges they are experiencing.

In short, the SORNA implementation process is facing a crisis. As of this hearing, and nearly five years since passage of the Adam Walsh Act, only seven jurisdictions—four states, two tribes, and one territory—have been found in compliance with SORNA. The remaining 241 jurisdictions face an unjustified and harsh tax on their Byrne grant funding this year, and every year that they do not comply. As we all know, Byrne monies are used to fund essential state and local programs, such as law enforcement and other community programs. It would be a double disaster for states to lose these monies for not being able to afford to implement the requirements due to their current severe budget shortfalls.

Despite my opposition to the Adam Walsh Act, I believe that if we are going to insist on imposing requirements upon states, territories, and tribes, it is incumbent upon us to do more than just require them to comply. I believe that it is Congress' obligation, having passed such an onerous and unfunded mandate, to help find solutions to the problems facing states trying to implement SORNA before we compound the problem by penalizing them monetarily. Thus, we should consider the feedback that we will hear today, and that we have been provided in the years since the law's passage, and earnestly seek to meet the legitimate concerns.

Some of this feedback came to us by way of a previous hearing on SORNA. In March 2009, under my leadership of this subcommittee, I convened a hearing on barriers to implementing SORNA. Nearly two years later many of these barriers that we heard at that hearing still exist. These include the high cost associated with implementation, the challenges that requiring juveniles to register pose for states, including pending legal challenges, both legal and practical challenges with SORNAs retroactivity requirement, the whole scale re-classifying of sex offenders, and tribe specific challenges, including the loss of sovereignty if tribes do not comply. At that hearing we heard testimony from various state and law enforcement officials addressing each of these challenges. Unfortunately, many of these obstacles still exist.

One of the greatest difficulties with implementation of SORNA continues to be the requirement that juveniles as young as 14 years old be placed on the registry. Despite that this registration requirement is limited to the most serious cases, and that just this year the Attorney General gave jurisdictions discretion to make juveniles non-public, numerous states are still having difficulties with this component, due to legal challenges, considerable pressure from advocates and child development experts, and state legislators' discomfort with placing juveniles on a registry. I would like to hear about the continuing challenges with the juvenile piece, despite the new guidelines. It may be time to re-visit the inclusion of juveniles in SORNA.

Another continuing impediment to implementation is SORNA's failure to allow for an actual risk assessment component to state registries. SORNA does not allow states to use risk assessment tools in developing its registry, which has posed a problem, particularly for those states that had long-standing, and effective, state registries that used risk assessment tools long before SORNA. These states must completely alter their systems, which is costly, and some have faced legal challenges in doing so. To be sure, research indicates that risk assessment is an effective way

to monitor offenders. We should all prefer a tool that helps us determine who is actually at risk of committing another sex offense, rather than just telling us who committed one in the past. Failing to distinguish between the two defeats the purpose of a registry and actually makes us less safe, not more.

Finally, tribes continue to face unique and compelling difficulties implementing SORNA. Out of 192 tribes who have opted into SORNA, only two have been found in compliance to date. As many of us know, tribes suffer from high poverty rates and struggle greatly with budget issues. In addition to losing much needed Byrne grant funds tribes face an even more serious penalty. Should they fail to implement SORNA, this public function will involuntarily be delegated to the state in which a tribe is located. States will then have to take on this additional responsibility, when they are already struggling to implement their own registries without also putting them in the difficult position of encroaching upon tribal sovereignty. In light of the double penalty that tribes face, the burden that SORNA imposes on them is enormous. I would like to hear about the likelihood that 190 tribes will be able to come into compliance in five months. And what we are going to do to help them avoid the penalties they will be subject to if they do not.

In light of the looming compliance deadline and that over 240 jurisdictions remain outstanding, it is also time for Congress to consider a statutory extension of the deadline. Before dismissing this as untenable or as a way to allow recalcitrant states to stall implementing SORNA, I urge my colleagues on both sides of the aisle to consider the fact that, although the Act contemplated that jurisdictions would have five years to implement SORNA, the Department of Justice did not issue guidelines until 2008, leaving them only three years to implement SORNA. Furthermore, last month the Department of Justice issued supplemental guidelines, just months before the final deadline. I also urge my colleagues to heed the testimony of the only witness representing a state here, Representative Collohon from Kansas, who will share her states' experiences and challenges, trying to implement SORNA.

In conclusion, it is my sincere hope that although this hearing is about reauthorizing the Adam Walsh Act generally, that we focus on the piece that is truly in danger of failing, SORNA, and come up with creative solutions. These may include amending SORNA to help facilitate compliance, with a specific eye towards fixing the juvenile, risk-assessment, deadline, and tribal issues. It is it not only our obligation, having imposed this mandate on jurisdictions, but it is also the right thing to do. Now, it is my understanding that the Majority's preoccupation with cutting the federal budget will mean across the board slashes to numerous programs. But it would be fundamentally unfair to demand that states meet a costly mandate, while at the same time reducing funding opportunities to help them do so.

Thank you for attending today's hearing. I look forward to hearing from all the witnesses.

Mr. SENSENBRENNER. Without objection, all Members' opening statements will be made a part of the record. And also, without objection, the Chair will be authorized to declare recesses during votes on the House floor.

It is now my pleasure to introduce today's witnesses. Dawn Doran is the Deputy Secretary of the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking Office, or SMART, for the U.S. Department of Justice, Office of Justice Programs. She works to administer the standards of the Sex Offender Registration and Notification Act, including administration of grant programs and providing technical support for SORNA.

Prior to joining the SMART Office, she served as the Deputy Director of the National Assistant District Attorneys Association Child Abuse Program. She was also Assistant District Attorney General in Memphis, serving as co-chair of the Sexual Offenders Registry Violation Unit, and a member of the Child Physical and Sexual Abuse Warrant Review Act. She received her bachelor of science degree in public and business administration from the University of Tennessee at Martin, and her law degree from the University of Tennessee.

Ernie Allen is the cosponsor of the National Center for Missing and Exploited Children and has served as its President and CEO for 22 years. Mr. Allen is also the founder of the International Center for Missing and Exploited Children and serves as its CEO. Under his tenure at NCMEC, more than 150,000 missing children have been recovered. He has received both his bachelor degree and his JD from Louisville University.

Stacia Hylton is Director of the United States Marshals Service, having been appointed by President Obama as the 10th director of the service, and sworn in on December 31, 2010. She has over 30 years of law enforcement and management experience within the Justice Department.

Prior to her appointment as Director of the Marshals Service, she served as the Attorney General's Federal Detention Trustee from 2004 to 2010, and was the incident commander organizing the Marshals Service response for Ground Zero. She began her career in 1980 as a Deputy U.S. Marshal and has received her bachelor of science in criminal justice from Northeastern University.

Finally, Pat Colloton has served in the Kansas House of Representatives since 2004. She authored legislation on the expansion of DNA testing to facilitate the early detection and arrest of sexual predators, new approaches to community corrections, and revising laws regarding domestic violence and victim notification. She currently serves as Vice Chair of the Board of Directors of the Justice Center, a national organization under the Council of State Governments, which focuses on developing evidence-based practices and laws in the criminal justice system.

Prior to her career in politics, Ms. Colloton was a small business owner, an attorney, who also served as a member of the Johnson County Public Policy Council. She received a bachelor of science in chemistry and psychology and a juris doctorate from the University of Wisconsin, and was in my law school class, so I know she got a very good education there.

But before recognizing Ms. Doran, I am informed that the most recent Chairman emeritus of the Committee wishes to make an opening statement, and the Chair recognizes the gentleman from Michigan, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Thank you very much, earlier Chairman emeritus of the Committee. I am glad that you were generous enough to allow me just to make a small comment about the hearing today because—I am not sure about this—but I think with Bobby Scott I opposed this too a few years back, only I didn't have the courage to say anything and speak up about it. He went on the floor and gave a—it was a heroic act by ex-chairman Scott, and I am proud of you for it.

There are concerns. There are, I think, 40-some-odd States who are in jeopardy of losing part of their Byrne JAG grants in July, and that is going to be a fair amount of money for everybody.

The second thing I don't like about this law that we are examining is that there is a strict compliance standard that disturbs me a great deal, and I hope that the witnesses will comment on that. I think we need flexibility in compliance.

And could some one of our distinguished witnesses, can some talk about the tribal sovereignty issue in this SORNA law that

seems to be pretty—it is not being worked in any way that I think is fair to those on reservations.

And finally, we have this problem with juveniles. Should juveniles be treated as adults? Not a new problem. And it is so important that it is going to the Supreme Court. We are in the process of examining—the registration provision of SORNA may not be retroactively applied to delinquent individuals. The court has said—repeatedly almost—in focusing on juvenile adjudications, that we do not punish our Nation's youth as harshly as we do our fellow adults. And so with those qualifications in what we are doing, I find myself in the position of, first, hoping someday that we will have a clear examination of this law and make the changes that importantly need to be made, but in the meantime, I don't want to punish the States who are not in compliance.

This is an unfunded mandate. Nobody has used that term this morning, and so I will. The States are mostly in a bind; there are very few that are not having incredible funding cuts. And the President's budget release doesn't help things a bit in terms of this and many other areas. And so I look forward to the witnesses, and I yield back the balance of my time and thank the Chairman.

[The prepared statement of Mr. Conyers follows:]

Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary

With the enactment in 2006 of the Adam Walsh Act, a number of significant amendments to our federal criminal code were made and a national sex offender registry system was established, among other things.

As some of you may recall, I had serious concerns about the this legislation. In particular, I opposed several provisions, not the least of which were those that imposed severe mandatory minimum sentences and created additional death penalties.

No one doubts the importance of protecting our children from sex offenders and making our communities safer. So, despite the many problems that with the Adam Walsh Act, I believe the intent behind the bill was laudable, namely, to protect our children.

Unfortunately, however, the Act has not accomplished its intended goals. In fact, it may even have made children less safe, by diluting state sex offender registries and making them less effective in helping us determine who is and is not dangerous.

Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act, referred to as SORNA, requires states, territories, and federally-recognized tribes to create a sex offender registry, according to certain onerous federal specifications.

If these entities fail to do so by July of this year, however, they will be penalized by losing 10% of their Byrne Grants per year.

At the time that the Adam Walsh Act passed, we warned that this may be an unobtainable goal. It unfortunately now appears that our concerns were justified.

Since 2006, *only 7 jurisdictions* have been able to meet this requirement.

Worse yet, *more than 240 jurisdictions* are now in danger of losing significant amounts of federal money that they could use to fund critical law enforcement and other essential community programs.

In short, SORNA is failing and Congress is now faced with the challenge of cleaning up this mess.

Today's hearing will help us figure out how to address this problem and to help those struggling with implementing SORNA before they are penalized.

Accordingly, I would like my colleagues and the witnesses to focus on three aspects about the kind of clean-up process we should undertake.

First, our discussion about SORNA must begin with a recognition that it imposed an unfunded mandate on states, territories, and tribes and the cost of this mandate is one of the biggest obstacles to implementing SORNA.

The Justice Department grants that are made available to help offset the implementation costs are simply inadequate. In fact, the State of Texas—which my colleague, the Judiciary Committee Chairman, represents—has published reports

about the obstacles to implementing SORNA. They conclude that it would cost Texas *$14 million a year* to implement SORNA.

Furthermore, the Senate Criminal Justice Committee recommended that Texas not implement SORNA.

You can imagine how serious the problems are with SORNA if Texas, one of the toughest states on offenders, is unable to comply.

I hope we will take particular heed of Kansas State Representative Patricia Collohon's testimony describing the overwhelming cost of implementing SORNA that states are facing and how we can develop strategies to assist them in this monumental endeavor.

Second, we must consider the effectiveness of these federal requirements, especially given the fact that they will obligate the states to spend millions of dollars to implement them.

We must ask ourselves some hard questions, such as—

- How effective are sex offender registries?
- Are states getting the most bang for their buck, particularly in this time where most states are suffering significant budget short falls?
- Do these registries really make us safer?
- And, are there better ways to protect our children?

Research does not indicate that these registries truly keep us safer, particularly when they lump together serious sex offenders with less serious sex offenders, like SORNA does.

In fact, they give us a false sense of security and perpetuate the myth that strangers are most likely to victimize our children, which simply is not true. The sad truth is that most children are victimized by family members or friends of the family.

Whether sex offender registries actually make us safer is a question that is further complicated when you consider that SORNA does not allow states to assess risk in their registries.

In other words, they must register people based solely on the offense for which they were convicted, not on their actual risk of re-offending. This is simply nonsensical.

The problem with SORNA's failure to take into account risk is underscored when one considers that states had been registering sex offenders long before SORNA.

Indeed, many have developed sophisticated risk assessment tools to help them create and maintain their registries.

These systems were working for states, when Congress came along in the Adam Walsh Act and decided to impose its ideas about what works best on them.

SORNA does not allow states to use risk assessment in registering offenders and so states that had been doing so and whose systems were working had to scrap them and start all over with none of those tools.

In light of the research that affirms the value of risk assessment tools and given the significant difficulties states are having implementing SORNA, omitting risk assessment turned out to be quite an unwise idea.

It is time to revisit the issue of risk assessment in SORNA.

Finally, it is worth noting that imposing federal mandates—especially unfunded ones that then jeopardize a state's funding—goes against one of the Majority's fundamental principles that it frequently espouses, namely, states' rights.

Yet this did not stop the Majority from imposing SORNA and I am certain that it will not stop my colleagues on the other side from continuing to espouse the value of the Adam Walsh Act and SORNA.

States have been struggling with implementing SORNA for almost 5 years and the overwhelming majority are making a good faith effort to comply with the law.

Yet despite their best efforts, only 3 states have been able to comply so far.

This statistic alone should give both sides pause and prompt us to develop real solutions to the problems that states, tribes, and territories have encountered in trying to implement SORNA.

It also means we must revisit those aspects of the Adam Walsh Act and SORNA that have been proven unworkable since its passage.

I thank the witnesses in advance and look forward to hearing from each of you.

Mr. SENSENBRENNER. I thank the Chairman emeritus.

Ms. Doran, you are recognized for 5 minutes. And everybody's full statement will be placed in the record.

TESTIMONY OF DAWN DORAN, DEPUTY DIRECTOR, SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING (SMART) OFFICE, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC, ON BEHALF OF LINDA BALDWIN, DIRECTOR, SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING (SMART) OFFICE, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. DORAN. Good morning, Mr. Chairman, Ranking Member Scott, and Members of the Subcommittee. I am pleased to have the opportunity, on behalf of Director Baldwin, who was called away last night on a family emergency, to discuss the Department of Justice's work to implement the Sex Offender Registration and Notification Act, or SORNA.

I am Dawn Doran, Deputy Director of the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, or SMART, within the Department's Office of Justice Programs.

The SMART Office has the primary responsibility within the Department of assisting States, territories and tribes in implementing SORNA. The work of the SMART Office is a part of the Department's efforts to assist in implementing the Adam Walsh Child Protection and Safety Act of 2006.

I am honored to appear today with Director Hylton, our invaluable partner in this effort. Also, I want to acknowledge another invaluable partner, Ernie Allen and the National Center for Missing and Exploited Children.

We are pleased that Ohio, Florida, Delaware, South Dakota, Guam, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes and Bands of the Yakama Nation have substantially implemented SORNA. We are cautiously optimistic that many more States, territories, and tribes will follow suit by the implementation deadline of July 27, 2011.

The SMART Office provides critical resources and guidance to the 248 SORNA States, territories, and tribes. Since fiscal year 2007, the SORNA jurisdictions have received over $39 million in grants, training, and other resources under our support for the Adam Walsh Act Implementation Grant Program. SORNA addresses gaps in registration programs that are the result of variations in laws, policies, information sharing, and technology systems across the country. To address some of these gaps, the Act permitted for the first time 212 tribal nations to elect to become SORNA registration jurisdictions and, of those, 192 have chosen to do so.

The SMART Office has provided numerous resources to help these tribes address information sharing and technology gaps. One example is the Tribe and Territory Sex Offender Registry System, or TTSORS, available free of charge to all SORNA tribes and territories. TTSORS can serve as both the administrative registry system and the public sex offender Web site system needed for tribes and territories to comply with SORNA. We have developed a similar system to help States, called the Sex Offender Registry Tool, or SORT, and another tool called the SORNA Exchange Portal to help all SORNA jurisdictions to share information about sex offenders

who are relocating between jurisdictions or are required to register in more than one jurisdiction. These are free of charge as well.

The SMART Office also administers the Dru Sjodin National Sex Offender Public Web site, which is the public's link to information regarding registered sex offenders across the country. All 50 States, the District of Columbia, three U.S. territories, and 22 tribal nations have public Web sites now linked to this site.

Many jurisdictions that have not fully implemented SORNA have still made great strides. Director Linda Baldwin has submitted, along with her written testimony, detailed information on SORNA activities as reported by each State, territory, and D.C. The information submitted is based on our frequent contacts with the SORNA jurisdictions. To date, 47 States, the District of Columbia, five territories, and 41 tribes have submitted materials to the SMART Office for review and technical assistance. The SMART Office has reviewed and responded to all but the most recent of these submissions, providing specific guidance back to the jurisdictions regarding their current and proposed registration and notification systems and laws.

Despite our best efforts, including the development of supplemental SORNA guidelines that address some of the SORNA jurisdictions' substantive concerns, and despite the efforts of many on the State, local, and tribal level, some serious barriers remain. These barriers include, among others, opposition to SORNA requirements, such as juvenile registration, the impact of government turnover, and the anticipated cost of compliance. Most of the jurisdictions are in the position of having to change their existing laws in order to meet SORNA's requirements. Many States have introduced bills in their legislatures that would move them toward substantial implementation of SORNA. It is difficult to predict, however, which ones will be successful in enacting legislation prior to the July 2011 deadline.

One hundred and ninety-two SORNA tribes are facing barriers similar to those of the States, with some variations. Most tribes face challenges in establishing sex offender registration and notification systems and codes for the first time. Please be assured that the Department is committed to helping every jurisdiction meet the implementation deadline and that we will continue to work to develop the seamless web of public sex offender Web sites and law enforcement information sharing as envisioned by SORNA.

This concludes Ms. Baldwin's introductory statement, Mr. Chairman. Thank you for the opportunity to testify today. And I will be glad to try to answer any questions you or Members of the Subcommittee may have.

Mr. SENSENBRENNER. Thank you. The gentlewoman's time has expired.

[The prepared statement of Ms. Baldwin follows:]

Department of Justice

STATEMENT OF

LINDA BALDWIN
DIRECTOR
SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING,
AND TRACKING (SMART) OFFICE
U.S. DEPARTMENT OF JUSTICE

BEFORE THE

HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES

ENTITLED

"THE REAUTHORIZATION OF THE ADAM WALSH ACT"

PRESENTED

February 15, 2011

Mr. Chairman, Ranking Member Scott and Members of the Subcommittee: I am pleased to have the opportunity to discuss the Department of Justice's work to implement the Sex Offender Registration and Notification Act (SORNA). We appreciate this Subcommittee's interest in this issue.

My name is Linda Baldwin and I am the Director of the Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) Office within the Department's Office of Justice Programs (OJP). The SMART Office has the primary responsibility, within the Department, of assisting states, territories and tribes in implementing SORNA. Of course, we would also like to recognize that the bulk of the work on SORNA implementation has been, and will continue to be, carried out by the state, tribal and local jurisdictions.

As the Subcommittee is aware, the work of the SMART Office is a part of the Department's multi-level efforts to assist in the implementation of the Adam Walsh Child Protection and Safety Act of 2006. The United States Marshals Service (USMS) is actively working on the enforcement provisions of the Adam Walsh Act. I am honored to be here today with USMS Director Hylton, who has been an invaluable partner. I am also grateful for the work of the Federal Bureau of Investigation in running the National Sex Offender Registry and working with law enforcement to collect necessary data on sex offenders and the many United States Attorneys who are actively prosecuting federal failure to register cases. Together we are working to fulfill the promise of the Adam Walsh Act.

I also want to acknowledge Ernie Allen and the Sex Offender Tracking Team (SOTT) at the National Center for Missing and Exploited Children. Their work in this area has been essential.

Today I will briefly discuss the current status of SORNA implementation; the efforts by the SMART Office to help states, tribes and territories with implementation; and some of the remaining barriers SORNA jurisdictions face.

I am happy to report that the states of Ohio, Florida, Delaware and South Dakota, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes and Bands of the Yakama Nation and the US territory of Guam have substantially implemented SORNA. We are cautiously optimistic that many more states, territories and tribes will follow suit by the implementation deadline of July 27, 2011. To date, 47 states, the District of Columbia, 5 territories and 41 tribes have submitted materials to the SMART Office for review and technical assistance. The SMART Office has reviewed and responded to all but the most recent of these submissions, and has sent official reports to 35 states, one U.S. territory and four tribes.

The SMART Office is providing resources and guidance to states, territories and tribes for SORNA implementation. Since Fiscal Year (FY) 2007, we have dedicated more than $39 million in grants, training and other resources to the field. In fact, 43 states, 3 U.S. territories and 58 Indian tribes have received funding under the SMART Office Support for Adam Walsh Act Implementation Grant Program. Additionally, the Community Oriented Policing Services (COPS) Office has provided funding to local jurisdictions, and the Office on Violence Against Women has

supported tribes, specifically for SORNA implementation purposes. The Department has issued Guidelines, Implementation Documents and Supplemental Guidelines addressing, among other things, obstacles cited by jurisdictions as impeding implementation. Last month, as we have each year since the Adam Walsh Act was passed, we held a national workshop on SORNA implementation for representatives from each of the implementing jurisdictions. The workshop addressed issues such as implementation costs, available resources and the implications of the upcoming deadline.

As you know, SORNA addressed gaps in registration programs that are the result of variations in laws, policies, and information-sharing and technology systems. Prior to SORNA, these gaps made it possible for sex offenders to move from one jurisdiction to another and evade registration requirements. In part to address those gaps, the Act permitted, for the first time, 212 tribal nations to elect to become SORNA registration jurisdictions, and of those 192 tribes have chosen to do so. Most of these tribes are working to become connected to our national network of law enforcement and public information-sharing regarding sex offenders. Accordingly, in addition to the direct assistance we have provided to jurisdictions regarding their laws and policies, the SMART Office has provided numerous resources to help address information-sharing and technology gaps.

One example is the Tribe and Territory Sex Offender Registry System (TTSORS), which is available free of charge to all SORNA tribes and territories. TTSORS can serve as both the administrative registry system and the public sex offender website system needed for tribes and

territories to comply with SORNA. Jurisdictions that decide to use TTSORS do not have to purchase any special information technology (IT). They do not need to hire any IT staff or bear the burden of developing an IT infrastructure to run a sex offender registration and notification system. All they need to have in place is basic Internet access. Currently 229 people representing 125 tribes have attended a TTSORS training. One hundred and ten tribes and territories are already using or testing TTSORS, and 46 of those are using TTSORS as their production sex offender management system and public sex offender website.

We have developed a similar system to help states called the Sex Offender Registry Tool (SORT), which, like TTSORS, is available free of charge. Also like TTSORS, SORT can serve as an administrative registry system. It offers local registration agencies their own public sex offender Web site system that is needed to meet SORNA requirements and provides electronic community notifications to other law enforcement agencies and the public. Currently ten states have expressed interest in utilizing SORT and three have begun projects to customize SORT for their jurisdictions' implementation.

In addition, the SMART Office has developed the SORNA Exchange Portal to help states, territories and tribes share information about sex offenders who are relocating between jurisdictions or are required to register in more than one jurisdiction. The Portal also provides an easy way for states, territories and tribes to share ideas and crucial information such as contacts, announcements, and historical files. The Portal can be fully integrated into existing sex offender management systems, TTSORS, and SORT. We currently have 382 Portal users -- representing 50 states, two

U.S. territories, the District of Columbia, 37 Indian tribes, U.S. Marshals, and other federal law enforcement agencies -- and reports have shown that use of the Portal continues to increase.

The SMART Office also administers the Dru Sjodin National Sex Offender Public Website (NSOPW), the public's link to information regarding registered sex offenders across the country. At this time, all 50 states, the District of Columbia, 3 U.S. territories and 22 tribal nations have sex offender public websites linked to NSOPW. The SMART Office continues to work with jurisdictions to provide additional offender information to NSOPW so that new search functionality and more offender information can be made available to NSOPW users.

These technology tools, facilitated through the efforts of the SMART Office and embraced by all of the jurisdictions, have furthered one of the primary goals of SORNA – to create a backbone of information-sharing regarding sex offenders between jurisdictions.

The SMART Office is in constant contact with the states, tribes and territories to monitor their progress. As I mentioned, seven jurisdictions have substantially implemented SORNA and we expect many more to follow suit. It's worth noting that many jurisdictions that have not fully implemented SORNA have made great strides. Mr. Chairman, your home state of Wisconsin has improved its website capabilities and developed a work plan to address areas where laws and regulations are not SORNA-compliant. Iowa has strengthened information-sharing capabilities with agencies both within and outside of the state. The states of Maryland, Missouri, and Wyoming have implemented all but one or two key provisions of SORNA. Another state stands ready to implement

upon the resolution of a U.S. District Court injunction. And Maine has developed a relationship with local US Marshals to share information and track down non-compliant offenders. These are just a few examples.

Our goal is to ensure that as many jurisdictions as possible achieve SORNA implementation by the July 27, 2011, deadline. In 2009, the Department issued a blanket one-year extension. Last year, the Department required that any jurisdiction that wished to receive one final statutory extension submit a detailed extension request and all of the remaining jurisdictions took advantage of that opportunity, with the exception of one tribe that did not request an extension despite extensive outreach. After a careful review, the SMART Office granted extensions to all those who submitted a request.

Despite our best efforts, and despite the efforts of many on the state, local, and tribal level who are working very hard on this issue, some serious barriers remain. To better understand and explain the nature of these barriers, the SMART Office has categorized them as either specific or general. Specific barriers include opposition to specific SORNA requirements, such as juvenile registration, retroactivity, conviction-based tiering, or public notification. General barriers, on the other hand, include government turnover, public opposition (including strong advocacy groups opposed to SORNA), resistance to change, or legislative fatigue. For a few jurisdictions, the anticipated costs associated with SORNA implementation remain a primary reason for states' failure to pass required legislation.

To respond to the Committee's request for as much detailed information as possible, the SMART Office has compiled this information, as reported by each state, territory and the District of Columbia, into a document, which is submitted as an attachment to this testimony. In reviewing this material, we ask the Committee to keep in mind that the information provided is only as accurate as the information we have received from our jurisdictional contacts, who primarily work on this issue from within the executive branch of state government. Additional information is also available upon request.

The barriers that the 192 SORNA tribes are facing are similar to those that the states are facing, with some variations: most of the tribes face challenges related to establishing sex offender registration and notification systems for the first time, including the elements involved in the establishment of new infrastructure, such as hardware, software, personnel, training, and coordination. Another obstacle for some tribes is the difficulty in meeting information-sharing standards. While some of the tribes have more infrastructure in place than others, many face large costs related to both start-up and ongoing registration and notification activities.

To assist the jurisdictions in overcoming certain barriers to implementation, the SMART Office developed the Supplemental SORNA Guidelines and SORNA Implementation Documents. These resources clarified or provided the jurisdictions with greater flexibility in how they can meet SORNA's requirements, in particular, the juvenile registration and retroactivity requirements. Because we are only at the beginning of many jurisdictions' first legislative cycle following the issuance of these documents, however, it is too soon to tell how many additional jurisdictions will

now be able to pass legislation based on these and other clarifications and changes.

Most states are in the position of having to change their existing laws in order to meet SORNA's requirements. As you would expect, this legislative process can vary widely based on each state's statutory, economic and political situation. Many states have introduced bills in their legislatures that would move them towards substantial implementation of SORNA. It is, of course, difficult to predict, from state to state, which ones will be successful in enacting legislation and which ones will not.

The Adam Walsh Act requires that jurisdictions that do not substantially implement SORNA by the July 27, 2011 deadline and who receive Edward Byrne Justice Assistance Grant (JAG) Program funding from the Department of Justice will suffer a 10 percent reduction in this funding. The Adam Walsh Act does provide the ability for these funds to be returned to their jurisdiction to support SORNA implementation efforts. OJP is presently developing policies and procedures to ensure that such funds are reallocated to any jurisdiction that can demonstrate those funds will be used to support continued SORNA implementation efforts, thereby avoiding any reduction to the total amount of Byrne/JAG funding received by that jurisdiction.

Tribes, many of which do not receive direct Byrne/JAG funding, face a different penalty for non-implementation. Tribes that have not substantially implemented SORNA by the deadline, and cannot show that they will be able to do so within a reasonable period of time thereafter, will face delegation of their registration and notification functions to the state or states in which they are

located. Many tribes are concerned about the loss of sovereignty that any such delegation would create. For this reason, and because the tribes are in a unique situation having to develop their registration and notification systems from scratch in an often less developed criminal justice information-sharing environment, the SMART Office has provided specially focused technical assistance for the tribes, including the development of a Model Code, the TTSORS system mentioned earlier, and individualized group and on-site technical assistance made possible through a SMART Office grant. In addition, the SMART Office is continuing to work through a number of barriers to information-sharing that require greater amounts of coordination between the tribes and local, state or governmental agencies.

I would like to assure the Subcommittee that the Department is committed to helping each and every jurisdiction meet the implementation deadline. For the balance of the implementation time period and beyond, the SMART Office will continue to provide financial support (contingent upon the availability of funding), training and technical assistance, and other tools and resources to the SORNA jurisdictions. We will continue to work to develop the seamless web of public sex offender websites and law enforcement information-sharing envisioned by SORNA.

This concludes my statement, Mr. Chairman. Thank you for the opportunity to testify today. I welcome the opportunity to answer any questions you or Members of the Subcommittee may have.

ATTACHMENT

State/DC/US Territories SORNA Implementation Status
January 31, 2011

Jurisdiction	Contact Agency	Barriers	Feedback from SMART	AWA Funding
Alabama	Department of Public Safety		Preliminary substantial implementation review (2009); Offense Tiering review (2008); Community Notification review (2008)	$792,500
Alaska	Department of Public Safety	Juvenile requirements; In-Person Verification		$0
American Samoa	Department of Public Safety			$0
Arizona	Department of Public Safety	In-Person Verification; Website Display; juvenile requirements	Substantial implementation review (2008); Additional preliminary review (2010)	$0
Arkansas	Crime Information Center/ Attorney General	Juvenile requirements; retroactivity	Review of proposed legislation (2010); review of proposed legislation (2008)	$531,500
California	Department of Justice; California Emergency Management Agency	Verification Frequency; Community Notification	Preliminary substantial implementation review (2010)	$303,295
CNMI	Department of Public Safety		Review of proposed legislation (2010)	$0
Colorado	Division of Criminal Justice Services	Duration of Registration; Required Registration Information; Community Notification	Substantial implementation review (2010)	$467,801
Connecticut	The State Police	Juvenile registration	Review of proposed legislation (2011)	$387,725
Delaware	Attorney General		Substantial implementation (2010)	$385,017
District of Columbia	Attorney General/ Mayor's Office	Juvenile registration		$0

Jurisdiction	Contact Agency	Barriers	Feedback from SMART	AWA Funding
Florida	Florida Department of Law Enforcement		Substantial Implementation (2010)	$1,703,724
Georgia	Criminal Justice Coordinating Council	Juvenile Registration, Retroactivity		$277,994
Guam	Attorney General		Substantial implementation review (2009); review of proposed legislation (2010); substantial implementation (2011)	$0
Hawaii	Attorney General	Juvenile registration; in-person verification	Preliminary substantial implementation review (2010)	$600,000
Idaho	Bureau of Criminal Investigation		Review of proposed legislation (2008)	$0
Illinois	Attorney General/State Police	Juvenile registration; retroactivity	Review of proposed legislation (2010)	$358,663
Indiana	Department of Correction	Tiering, juvenile requirement; retroactivity	Offense Tiering review (2010)	$902,978
Iowa	Division of Criminal Investigation, Department of Public Safety	Retroactivity	Offense Tiering review (2008); substantial implementation review (in-progress).	$521,400
Kansas	Bureau of Investigation		Constitutional conflict review (2009); review of proposed legislation (2011)	$396,785
Kentucky	Justice and Public Safety Cabinet/ State Police	Juvenile registration	Offense Tiering and juvenile statute review (2009); review of proposed legislation (2010)	$231,609
Louisiana	Attorney General		Preliminary substantial implementation review (2008)	$549,786
Maine	Attorney General's Office; Maine State Police		Constitutional conflict review (in-progress)	$360,733
Maryland	Department of Public Safety	Juvenile requirements	Preliminary substantial implementation review (2009); review of proposed legislation-2010; substantial implementation (2011)	$440,206

Jurisdiction	Contact Agency	Barriers	Feedback from SMART	AWA Funding
Massachusetts	The Sex Offender Registry Board, and the Executive Office of Public Safety	Retroactivity; public website and offender verification requirements; registration information collected	Substantial Implementation review (2010)	$362,243
Michigan	State Police		Review of proposed legislation (2010)	$541,423
Minnesota	Bureau of Criminal Apprehension	Cost; risk-assessment system	Offense Tiering review (in progress).	$507,273
Mississippi	Department of Public Safety	Retroactivity	Preliminary substantial implementation review (2008); review of proposed legislation and offense tiering review (2009)	$309,000
Missouri	State Highway Patrol		Substantial implementation review (2009); review proposed legislation- 2010	$489,974
Montana	Division of Criminal Investigation	Tiering, Required Registration Information, Community Notification	Preliminary substantial implementation review (2010)	$0
Nebraska	The Nebraska State Patrol	Juvenile registration	Substantial Implementation review (2010)	$372,648
Nevada	Department of Public Safety		Substantial implementation review (2009)	$432,994
New Hampshire	New Hampshire State Police	Juvenile registration	Offense Tiering review - 2008; preliminary substantial implementation review (2010)	$300,000
New Jersey	Attorney General	Offense Tiering vs. risk assessment	Preliminary review (2008); offense tiering review (2010)	$219,038
New Mexico	Department of Public Safety	Juvenile Requirements, Offense Tiering vs. risk assessment	Offense Tiering review (2010); Preliminary review legislation—2011 (in progress)	$135,330
New York	Department of Criminal Justice/Office of Sex Offender Management	Offense Tiering vs. risk assessment; juvenile requirements; tribal issues	Offense Tiering review (2009); preliminary substantial implementation review (2010)	$596,698

Jurisdiction	Contact Agency	Barriers	Feedback from SMART	AWA Funding
North Carolina	North Carolina Department of Justice; State Bureau of Investigation			$263,109
North Dakota	North Dakota Office of Attorney General	Offense Tiering vs. risk assessment; posting all required offenders on public registry website		$775,000
Ohio	Attorney General		Substantial implementation (2009)	$229,699
Oklahoma	District Attorney Council/ Department of Corrections		Offense Tiering review (2008); Preliminary substantial implementation review (2010); review of proposed legislation (2011)	$205,584
Oregon	Oregon State Police	Costs; inclusion of offenses; offense Tiering; required information		$455,720
Pennsylvania	State Police	Juvenile registration	Offense Tiering review (2009)	$780,825
Puerto Rico	Department of Justice	Juvenile registration	Review of proposed legislation (2010)	$183,040
Rhode Island	Rhode Island Office of the Attorney General; Rhode Island State Police		Review of proposed legislation (2010)	$203,060
South Carolina	South Carolina Law Enforcement Division		Offense Tiering Review (2011); Substantial Implementation review in progress	$485,567
South Dakota	Office of the Attorney General		Substantial implementation (2010)	$176,803
Tennessee	Tennessee Bureau of Investigation	Juvenile registration	Review of current and proposed legislation (in progress)	$264,571
Texas	Department of Public Safety	Offense Tiering vs. risk assessment; costs	Offense Tiering review (2009)	$781,990
U.S. Virgin Islands	Department of			$463,030

Jurisdiction	Contact Agency	Barriers	Feedback from SMART	AWA Funding
Utah	Department of Corrections	Offense Tiering; juvenile registration; community notification	Substantial implementation review (2010)	$906,463
Vermont	Department of Public Safety	Juvenile registration		$150,000
Virginia	Virginia State Police; Virginia Office of the Attorney General	Juvenile registration; tiering; in-person appearances	Substantial implementation review (2010)	$38,155
Washington	Governor/Sex Offender Policy Board	Offense Tiering vs. risk assessment	Offense Tiering review (2010); preliminary substantial implementation review (2010)	$0
West Virginia	Division of Criminal Justice Services	Juvenile registration		$0
Wisconsin	Wisconsin Department of Corrections	In-person verification	Tiering Review (2011)	$256,447
Wyoming	Division of Criminal Investigation	Juvenile requirements	Substantial implementation review (2010)	

Mr. SENSENBRENNER. Ms. Hylton.

TESTIMONY OF STACIA A. HYLTON, DIRECTOR, U.S. MARSHALS SERVICE, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. HYLTON. Thank you, Chairman Sensenbrenner, Ranking Member Conyers, Ranking Member Scott, and all Members of the Subcommittee for holding this hearing.

It is an honor to be here with Deputy Director Doran from the Department's SMART Office, Ernie Allen from NCMEC, and Representative Colloton from the Kansas State legislature. Thank you

for the opportunity to share the Marshals Service's accomplishments and challenges related to this important piece of legislation.

The Adam Walsh Act was a monumental bill, changing how this country addresses registering, monitoring, and apprehending sex offenders. This Committee, as well as the full House and Senate, showed tremendous leadership in drafting and passing this Act 5 years ago.

The Act added three new and important mandates for the Marshals Service: To assist State, local, tribal and territorial authorities in the location and apprehension of noncompliant sex offenders, to investigate violations of the criminal provisions of the Act, and to identify and locate sex offenders displaced by major disasters. I am proud to say the Marshals Service has made significant strides in each area.

To accomplish the enforcement mission under the Act, the Marshals Service took numerous steps, including hiring and training deputies in sex offender investigations, designating leadership positions throughout the agency to coordinate enforcement efforts, creating the National Sex Offender Targeting Center, developing new partnerships with Federal, State, local, and tribal agencies to locate and apprehend offenders, and launching specific operations to target noncompliant sex offenders nationally.

Our goal is to leverage our resources and partnerships to maximize noncomplying sex offender apprehensions. For instance, by training leaderships and field offices about our mandates under the Act, coupled with the training of sex offender investigators in our field offices, we have a more knowledgeable workforce at every level. We combine this effort with training for our State and local partners. Approximately 50 agencies have already participated, and we have two more training sessions for new participants scheduled this spring. Better training at all levels results in a greater number of apprehensions.

Last July, the Marshals Service launched Operation Guardian with State and local agencies to target the worst of the worst sex offenders. As this Committee knows, the number of noncompliance sex offenders is staggering. The Marshals Service initiated this operation in each judicial district to target the five most dangerous sex offenders based on their criminal record, efforts to avoid capture or registration, and danger posed to the public.

Let me be clear, every noncompliant sex offender is a potential threat. This operation is working with limited resources, with a focus on realizing the greatest success possible. Operation Guardian helps to ensure we find these particularly dangerous offenders and get them off the streets, making our communities safer with the resources provided to us. This targeted approach is proving successful with over half the cases closed in less than a year.

The Marshals Service continues to be an agency which prides itself in the extent and quality of its partnerships. Along with the SMART Office, NCMEC, our Federal, State, local and tribal law enforcement partners, we continue to find new and innovative ways to strengthen our relationships. The National Sex Offender Targeting Center at the Marshals Service is a prime example of these partnerships in action. It is an interagency center providing intelligence and resource support to other law enforcement agencies, co-

ordinating international sex offender apprehensions, and generating new behavioral tools for use by investigators. The Targeting Center is an important resource to enforce the Act and to support our partners' efforts to do the same.

Our success can be seen in the numbers. Since July 2006, our deputy marshals have initiated almost 8,000 sex offender investigations. In addition, the Marshals Service has either directly arrested or assisted our State and local partners with the captures of over 43,700 sex offenders nationwide. The Marshals Service remains a leader in fugitive apprehension, and the Act provided us the additional assets to take the apprehension of sex offenders to another level.

This funding, provided by Congress since fiscal year 2008, directly contributed to this impressive number of noncompliant sex offenders brought to justice. Today, the effective and efficient use of these resources is more important than ever, and these numbers represent a significant return on the investment made by Congress to keep our children and our communities safe.

Thank you for the opportunity to testify and for your ongoing support on this important issue.

Mr. Chairman, this concludes my remarks, and I am pleased to answer any questions.

Mr. SENSENBRENNER. Thank you.

[The prepared statement of Ms. Hylton follows:]

Department of Justice

STATEMENT OF

STACIA A. HYLTON
DIRECTOR
U.S. MARSHALS SERVICE
U.S. DEPARTMENT OF JUSTICE

BEFORE THE

HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES

ENTITLED

"THE REAUTHORIZATION OF THE ADAM WALSH ACT"

PRESENTED

February 15, 2011

I would like to thank Chairman Sensenbrenner, Ranking Member Scott, and the members of this committee for holding this important hearing. I know everyone working on Adam Walsh Act cases at the Marshals Service appreciates the Committee's interest in this issue, and we welcome the opportunity to update you on our work. I am also proud to offer testimony on this panel with two individuals who work every day to keep children from harm's way: Linda Baldwin of the SMART office, and Ernie Allen from the National Center for Missing and Exploited Children. The Marshals Service will continue to collaborate with their organizations as we comprehensively address all the challenges in carrying out the Act.

Background

This committee showed tremendous leadership in working with the full House and Senate to pass the Adam Walsh Act five years ago. The Act added an important mandate to the mission of the Marshals Service. This landmark legislation strengthened nationwide standards for sex offender registration, and made the failure to register with authorities a federal crime (see 18 U.S.C. § 2250). The Marshals Service has three key missions under the Adam Walsh Act: to assist state, local, tribal, and territorial authorities in the location and apprehension of non-compliant sex offenders; to investigate violations of the criminal provisions of the Act (18 U.S.C. § 2250), and to identify and locate sex offenders displaced as a result of a major disaster.

As mandated by the Adam Walsh Act, a sex offender must periodically appear in person before a registering agency. Tier I offenders (the least serious offenders) are required to check in in-person once a year and are required to register for 15 years. Tier II offenders are required to check-in twice a year and must register for 25 years. Tier III offenders, the most serious offenders, must report in person four times a year and register for the remainder of their lives.[1] Failing to comply with these registration requirements is a felony, as noted above, and these cases represent the vast majority of warrants handled by our deputies in the Sex Offender Investigations Branch.

The Marshals Service considers anyone who fails to register or provides inaccurate information to a registering authority as a potential threat to the public, particularly children, but we prioritize our investigations to go after the "the worst of the worst." The National Center for Missing and Exploited Children estimates that over 728,000 sex offenders reside in the United States, of which more than 100,000 are classified as non-compliant or unregistered. In July 2010, the Sex Offender Investigations Branch of the Marshals Service launched Operation Guardian, which targets the five most dangerous non-compliant sex offenders in each District around the country. The targets were assessed based on their danger to the public, while paying particular attention to those who had previously victimized minors. Operation Guardian is the first operational tasking under the non-compliant investigative strategy known as Project Sentinel, a multi-faceted, long-term strategy under which various operations targeting regional, national, and international offenders will be conducted. A recent success story for one Operation

[1] The registration period for Tier I offenders may be reduced to 10 years, and the registration period for Tier III offenders registered on the basis of juvenile delinquency adjudications may be reduced to 25 years, if they maintain "clean records" as provided in the Act.

Guardian fugitive highlights the importance of targeting the worst known offenders. One of Texas' top ten sex offenders was found in Monterrey, Mexico last October. He had cut off the monitoring device around his ankle in 2002 and fled to Mexico. He was charged with the failure to register as a sex offender after he was found guilty of several violent sexual assaults in the San Antonio area. By targeting him through Operation Guardian, the Marshals Service brought the full weight of international, federal, state and local law enforcement resources and intelligence to bear to locate the fugitive and take him into custody. It is a tribute to the men and women of the Marshals Service as well as local law enforcement in San Antonio that this fugitive has been apprehended and will no longer pose a threat to the community.

Progress Since 2006

After passage of the Adam Walsh Act, the Marshals Service immediately responded. Though funding through appropriations did not occur until 2008, upon passage of the legislation, the Marshals Service worked to integrate the goals of the legislation into its mission. In October 2006, the Marshals Service conducted Operation FALCON III in partnership with hundreds of state and local law enforcement entities. In that one week operation alone, we apprehended 1,659 sex offenders, 971 of whom were unregistered or otherwise out of compliance with their registration requirements. We also safely recovered one missing child and arrested a sex offender while he was babysitting three young children. The Marshals Service conducted additional FALCON operations in 2007, 2008, and 2009, during which 5,677 sex offenders were arrested.

Since July 27, 2006, the Marshals Service initiated 7,949 sex offender investigations; 1,448 warrants have been issued for federal registration violations; 1,124 Adam Walsh Act fugitives have been arrested; and 1,203 warrants for registration violations have been cleared through arrest of the offender by the Marshals Service. We have arrested 43,709 fugitive sex offenders since the law's inception. As an agency, the Marshals Service will continue to look for new and innovative ways to accomplish our mission under the Adam Walsh Act.

To continue producing results, the Marshals Service focuses on developing a skilled workforce of both operational and support staff to advance the mission of the Sex Offender Investigations Branch. The Marshals Service has trained some deputy U.S. marshals as Sex Offender Investigations Coordinators (SOICs) to serve on the front lines to track and apprehend non-compliant sex offenders and liaise with state and local law enforcement officials. We also have sought to ensure that leadership in each District office, not just those working exclusively on sex offender cases, understand the importance of these investigations. Our goal is to train all Marshals Service criminal investigators on sex offender investigations. By training the individuals who work on sex offender investigations every day as well as those who may have limited exposure to those cases by virtue of their other assignments or management duties, the Marshals Service will ensure that everyone in each District is aware of the importance of the mission to track and monitor unregistered or non-compliant sex offenders.

National Sex Offender Targeting Center

The National Sex Offender Targeting Center (NSOTC) was established in Fall 2009 to support the mission of the U.S. Marshals Service under the Adam Walsh Act. The NSOTC functions as an interagency intelligence and operations center to assist with identifying, investigating, locating, apprehending, and prosecuting non-compliant, unregistered fugitive sex offenders. The Targeting Center collaborates with the National Center for Missing and Exploited Children (NCMEC) and the Department of Justice's Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) Office to support all levels of law enforcement in pursuing unregistered and non-compliant sex offenders. Other federal agencies are represented at the Targeting Center, including the Department of State's Diplomatic Security Service. The Department of the Army also detailed two officers to the Targeting Center to assist in locating sex offenders in the U.S. military. In addition, the NSOTC assigned its intelligence analysts to the Customs and Border Protection Targeting Center and INTERPOL's Child Exploitation Human Trafficking Division. These analysts work with NSOTC investigators to track and verify information on sex offenders who travel abroad.

In November 2010, the NSOTC began an initiative to identify, locate, register, and/or apprehend convicted sex offenders who failed to comply with registration requirements following discharge from the U.S. military. This initiative, entitled Operation Tarnished Service, identifies former service members who have committed sexually based offenses while on active duty. Subsequent to their arrest, confinement and conviction, these offenders failed to comply with registration requirements of the state in which they now reside. The NSOTC is working in conjunction with NCMEC and military, federal, state, and local law enforcement to ensure the offenders are registered or if in violation, that they are located and prosecuted.

The Targeting Center is comprised of three units: Operations, Intelligence, and Behavioral Analysis. The Operations Unit supports regional and local sex offender apprehension initiatives, provides resources for the investigation and prosecution of sex offender registration violations, coordinates the Marshals Service's response to major incidents involving sex offenders, and coordinates international law enforcement efforts regarding sex offenders. The Intelligence Unit includes members of the Marshals Service's Criminal Intelligence Branch and NCMEC's Sex Offender Tracking Team. Both groups work together to generate tactical and strategic intelligence support for sex offender investigations. Our Behavioral Analysis Unit (BAU) provides investigative and operational support to Marshals Service investigators, particularly in indentifying and apprehending non-compliant sex offenders. The BAU also assists outside law enforcement with cold case reviews, including solved or unsolved homicides where the murder appears to be sexually motivated.

The BAU plays an integral role in the way the Marshals Service understands and investigates fugitive sex offenders. One study authored by the head of the BAU, Dr. Michael L. Bourke, found that among 155 sexual offenders serving time for child pornography charges in a federal prison's residential sex offender treatment program, many had directly sexually abused children as well. Moreover, this abuse was not disclosed prior to treatment. The study concluded that "the number of reported victims known at the end of treatment, among all

offenders, was 1,777, an average of 13.56 victims per offender."[2] It is noteworthy to realize that the universe of victims was so large in these cases, given that most people inaccurately conclude that those who possess child pornography do nothing more than simply view these images. The *Butner Study* indicates these offenders also commit contact violations, which often go unreported. Armed with this knowledge, the Marshals Service is better able to investigate these individuals, identify all the crimes which may have been committed, and ensure justice is served.

The BAU prepares behavioral assessments and psychological insights into the minds of suspects and offenders, which help our deputies in the field understand a subject's patterns and motivations, hone interview and interrogation techniques, develop investigative strategies, and identify particular risks of violence associated with arresting a fugitive sex offender. In some cases, these offenders can be extremely violent toward law enforcement. One need only look at the recent shooting in St. Petersburg, Florida on January 24, 2011 to see how volatile these situations can become. The fugitive in that case was sought on a charge of aggravated battery. He was also a sex offender who had failed to register with state authorities. When located by task force officers, the fugitive opened fire, killing two St. Petersburg Police officers and wounding a Deputy U.S. Marshal.

In addition to conducting behavioral analyses of subjects and offenders, the BAU helps develop protocols for Deputy U.S. Marshals, law enforcement officers, judges, lawyers, court reporters, and other individuals who work in the field of sex crime investigations and frequently come into contact with child victims or who are required to view sexually explicit images of children for investigative purposes. In rare cases, Deputy U.S. Marshals enter a home looking for a fugitive only to discover him in the act of abusing a child. These difficult and potentially traumatizing incidents pose unique challenges to maintaining a healthy workforce. The BAU developed a program to monitor individuals who may be at risk for long-term psychological harm associated with this line of work. As an agency, we then can provide these employees with the services and support they may need to minimize the negative impacts of their difficult jobs.

International Ramifications

The Marshals Service's partnerships with other law enforcement agencies to track down unregistered and non-compliant sex offenders do not end at our borders. We actively engage with our colleagues domestically and in other countries to apprehend non-compliant sex offenders traveling internationally. We actively participate in the International Tracking of Sex Offenders Working Group (chaired by SMART) comprised of multiple agencies within the Department of Justice, Department of Homeland Security, Department of State, and Department of Defense, and have a lead role on many of those initiatives to develop a comprehensive tracking system for registered sex offenders as they enter and leave the country. In March 2010 the Marshals Service's National Sex Offender Targeting Center participated in the Wanted Child Sex Offender Initiative, run by the G-8 countries to identify and apprehend wanted child sex offenders from each member country. The G-8 includes representatives from the United States,

[2] Bourke, M. & Hernandez, A. (2009). The 'Butner Study' redux: A report of the incidence of hands-on child victimization by child pornography offenders.. *Journal of Family Violence, 187*, 183-191.

the United Kingdom, Canada, France, Germany, Italy, Japan, and Russia. Consider the case of John Edward Hamilton, one of the United States' ten most wanted sex offenders and a target of the Wanted Child Sex Offender Initiative. Hamilton had pled guilty in 2009 to two counts of aggravated sexual battery of a child, two counts of indecent liberties with a child, and one count of crimes against nature with a minor before he fled the United States. An INTERPOL Red Notice was issued soon thereafter. The notice, which was sent to every country in Europe, eventually led to his arrest in August 2010 when he was captured in Poland. These partnerships are instrumental to locate wanted sex offenders. The Marshals Service is proud of its relationships with foreign law enforcement and has actively expanded our reach and participation around the world to meet this growing challenge. In June 2010, the Marshals Service hosted international law enforcement liaisons from 13 embassies at the Targeting Center and provided them with an overview of the Marshals Service's role in apprehending non-compliant sex offenders. This meeting led to increased cooperation and coordination with these 13 countries.

The Marshals Service engages in other international partnerships which help effect the return of sex offenders abroad. In January 2011, the Department of State's Diplomatic Security Service notified the Targeting Center that a sex offender had been working as a contractor in Iraq. Members of the Marshals Service's Major Crimes Task Force in Baghdad and the Regional Security Officer coordinated on the case, which led to the contractor's return to the United States. The suspect was wanted in Norfolk, Virginia for child rape. In another case, a suspect wanted in Oregon for five counts of child sexual abuse was arrested in December 2010 when he arrived back in the United States at Los Angeles International Airport after he had traveled to Thailand. This suspect's arrest resulted from the collaboration with the Royal Thai Police. In a third example, the Diplomatic Security Service in Bangkok, Thailand contacted the Targeting Center with information on a suspect wanted in Alabama for first degree rape, first degree sodomy, and sexual abuse of a child under 12 years old. In this case, the Royal Thai Police arrested the suspect and Marshals Service personnel escorted him to the United States.

The circumstances regarding each fugitive sex offender are unique, and the Marshals Service works closely with foreign law enforcement officials to ensure the appropriate level of coordination and participation in an ongoing investigation. However, each of these examples from recent months demonstrates the value of domestic and international partnerships: continued collaboration between the law enforcement entities at home and abroad leads to successful apprehensions of wanted sex offenders.

Federal, State, Local, and Tribal Partnerships

Many of our investigations of non-compliant and unregistered sex offenders involve multiple jurisdictions. An offender may have been convicted and required to register in one state, only to move to another where he does not comply with registration requirements. A current case investigated by the Marshals Service demonstrates how some sex offenders are able to evade registration requirements. In 2000, a man was arrested in Florida on nine counts of lewd and lascivious assault on a child under the age of 16. These charges stemmed from the reports of two young girls who claimed they had been sexually abused by their mother's

boyfriend. The man pled no contest and was sentenced to three years in prison. He was released from prison in December 2002. Upon his release and pursuant to state law, he was required to register any changes to his employment or residence address within 48 hours. In January 2003, the offender moved to Alabama and twice updated his address of record. He was required to appear in person every six months to verify his information and continued to list an address in Alabama as his residence. In December 2010, this sex offender was stopped by Customs and Border Protection agents and sent to secondary screening at the international airport in Seattle, Washington. He was scheduled to fly to Manila and return to the United States a few weeks later. A search of his suitcase revealed three children's coloring books, candy, and $1,500 in U.S. currency. The offender told the agents the items were for his girlfriend's daughter. He also told agents he had been working and living in Everett, Washington for the past two years. Upon learning about this incident, the Marshals Service verified the sex offender's residence and employment information he provided to the CBP agents and contacted authorities in Alabama. Law enforcement in Alabama verified that the sex offender still shows up in person for his required check-in every six months but that at every site visit the Sheriff's Office had done, the sex offender's brother claimed he was out. The offender never registered in Washington State. Our deputies have used all of this information to build a case against this offender in the hope that he will never have the opportunity to victimize a child again.

The Marshals Service works with state, local, and tribal authorities to build relationships that help ensure sexual abuse and misconduct are properly reported. In April 2010, the Marshals Service launched Operation Last Frontier in rural Alaska. This effort is a combined law enforcement and community outreach initiative aimed at training civilians to identify and notify law enforcement when sex crimes have occurred. Non-compliant sex offenders in these remote areas are also targeted for arrest and prosecution. Given the complexity of investigating and adjudicating sexual abuse cases in rural areas, not the least of which includes the fact that many are accessible only via air or sea, the Marshals Service worked with Alaska State Troopers to create a program responsive to the needs of Alaska native villages. Our combined efforts and resources will go further in successfully monitoring and apprehending these offenders in this challenging environment.

As we have gained a greater understanding about the nature of sex offenders, the Marshals Service has sought to limit opportunities sex offenders may take to abscond from justice. For example, in the aftermath of Hurricane Katrina publicly available reports noted several thousand sex offenders had been displaced from Louisiana and the surrounding area, yet few had updated their last known address and other required information with the sex offender registry in their new jurisdictions. To prevent losing track of such a large population, the Marshals Service is working with the Federal Emergency Management Agency to ensure information on sex offenders displaced as a result of a major disaster is shared between agencies.

When other major storms such as Hurricane Ike have occurred, the Marshals Service deployed a number of our Deputy U.S. Marshals to the affected regions to reestablish a law enforcement presence and ensure displaced sex offenders comply with their obligation to register at any new address. To increase its response to displaced sex offenders during times of natural

Mr. SENSENBRENNER. Mr. Allen.

TESTIMONY OF ERNIE ALLEN, PRESIDENT AND CEO, THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN, ALEXANDRIA, VA

Mr ALLEN. Mr. Chairman, Mr. Scott, Mr. Conyers, the National Center for Missing and Exploited Children was a fervent supporter of the Adam Walsh Act in 2006. We remain so today.

As of our latest State survey in December, there are now 728,435 offenders in the United States required to register and update their information as it changes. As many as 100,000 of those offenders are missing or noncompliant. The number of registered offenders is going to continue to grow, and clearly States are struggling with the challenge. Yet we believe that States benefit from strong Federal cooperation and leadership under the Adam Walsh Act. For example, as you have heard from Director Hylton, the U.S. Marshals Service is tracking down serious fugitive sex offenders. We are grateful for the dedication and commitment of the SMART Office and their support of the States and tribes as they move toward compliance.

Congress also mandates that the National Center provide training and technical assistance to law enforcement in identifying and locating noncompliant sex offenders, and we are doing that.

In 2006, we created a sex offender tracking team which receives daily requests from States and localities regarding missing sex offenders. Our analysts run searches using public record databases donated by private companies. We are looking for links between noncompliant offenders and child abductions, attempted abductions, and sexual exploitation cases. We then forward that information to the appropriate law enforcement agency in a leads package, which is then used to search for fugitive offenders. To date, we have provided more than 6,000 of those leads packages, with more than 1,200 fugitive sex offenders located and arrested as a result. And at the request of the Marshals Service, we are assigning six of our analysts to their Sex Offender Targeting Center to assist in their efforts.

Regarding SORNA implementation, we believe that we have begun to see real progress. It has been a challenge, dependent upon both the executive and legislative branches of the States to act. These efforts were delayed because the guidelines on SORNA implementation were not issued until 2 years after the law was enacted, providing no clear direction until 2008.

We are pleased that efforts are underway today in most jurisdictions to work toward compliance. According to our friends at the National Conference of State Legislatures, 41 States enacted SORNA-related legislation in 2009, 28 States enacted SORNA-related legislation in 2010, and 23 noncompliant States are currently working on legislation that will bring them closer to achieving substantial compliance with SORNA. And Mr. Conyers, that is the language of the statute, not "strict" compliance, but "substantial" compliance. And we think the SMART Office is working in good faith with these States to achieve accommodations, where appropriate, under the law.

We recognize that States have faced barriers. A 2009 survey responded to by 47 States indicated four primary obstacles; 23 States cited the juvenile registration and reporting requirements; 20 States cited the retroactive application provisions; 7 States cited the tier-based system; and 7 States cited cost.

In January, Attorney General Holder published supplemental guidelines that in our judgment effectively address and resolve the concerns of most States about juvenile registration and the retroactivity provisions. We believe that the Attorney General's guidelines pave the way for many more jurisdictions to come into compliance with SORNA. Congress has appropriated funds for grants to States to help with compliance efforts and to fund the Marshals for their Adam Walsh Act responsibilities. We hope that Congress will remain committed to funding these efforts.

Mr. Chairman, we share your frustration that just seven jurisdictions have become compliant in the 5 years after the passage of the Adam Walsh Act. However, we believe that today the primary obstacles have been overcome and that many more jurisdictions are moving toward compliance. We believe that the goal of building a better, more unified sex offender registration system across the Nation is within reach.

Thank you.

Mr. SENSENBRENNER. Thank you.

[The prepared statement of Mr. Allen follows:]

TESTIMONY OF

ERNIE ALLEN
President & CEO

THE NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN

for the

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

“”The Reauthorization of the Adam Walsh Act”

February 15, 2011

Mr. Chairman and members of the Subcommittee, I welcome this opportunity to appear before you to discuss the sexual exploitation of children and the importance of the Adam Walsh Act. Chairman Sensenbrenner, we are deeply grateful for your long history of advocacy for children and for your leadership on these issues.

As you know, the National Center for Missing & Exploited Children is a not-for-profit corporation, authorized by Congress and working in partnership with the U.S. Department of Justice. NCMEC is a public-private partnership, funded in part by Congress and in part by the private sector. For 26 years NCMEC has operated under Congressional authority to serve as the national resource center and clearinghouse on missing and exploited children. This statutory authorization (see 42 U.S.C. §5773) includes 19 specific operational functions, among which are:

- operating a national 24-hour toll-free hotline, 1-800-THE-LOST® (1-800-843-5678), to intake reports of missing children and receive leads about ongoing cases;
- operating the CyberTipline, the "9-1-1 for the Internet," that the public and electronic service providers may use to report Internet-related child sexual exploitation;
- providing technical assistance and training to individuals and law enforcement agencies in the prevention, investigation, prosecution, and treatment of cases involving missing and exploited children;
- tracking the incidence of attempted child abductions;
- providing forensic technical assistance to law enforcement;
- facilitating the deployment of the National Emergency Child Locator Center during periods of national disasters;
- working with law enforcement and the private sector to reduce the distribution of child pornography over the Internet;
- operating a child victim identification program to assist law enforcement in identifying victims of child pornography;
- developing and disseminating programs and information about Internet safety and the prevention of child abduction and sexual exploitation; and
- providing technical assistance and training to law enforcement in identifying and locating non-compliant sex offenders.

Our longest-running program to help prevent the sexual exploitation of children is the CyberTipline, the national clearinghouse for leads and tips regarding crimes against children on the Internet. It is operated in partnership with the Federal Bureau of Investigation ("FBI"), the Department of Homeland Security's Bureau of Immigration and Customs Enforcement ("ICE"), the U.S. Postal Inspection Service, the U.S. Secret Service, the Military Criminal Investigative Organizations ("MCIO"), the Internet Crimes Against Children Task Forces ("ICAC"), the U.S. Department of Justice's Child Exploitation and Obscenity Section, as well as other state and local law enforcement. We receive reports in eight categories of crimes against children:

- possession, manufacture and distribution of child pornography;
- online enticement of children for sexual acts;
- child prostitution;
- sex tourism involving children;
- extrafamilial child sexual molestation;
- unsolicited obscene material sent to a child;
- misleading domain names; and
- misleading words or digital images on the Internet.

These reports are made by both the public and by Electronic Service Providers ("ESPs"), who are required by law to report apparent child pornography to law enforcement via the CyberTipline (18 U.S.C. §2258A). The leads are reviewed by NCMEC analysts, who examine and evaluate the content, add related information that would be useful to law enforcement, use publicly-available search tools to determine the geographic location of the apparent criminal act, and provide all information to the appropriate law enforcement agency for investigation. These reports are triaged continuously to ensure that children in imminent danger get first priority.

The FBI, ICE, Postal Inspection Service and the MCIOs have direct and immediate access to all CyberTipline reports, and assign agents and analysts to work at NCMEC. In the 13 years since the CyberTipline began, NCMEC has received and processed more than 1 million reports. ESPs have reported to the CyberTipline more than 8 million images/videos of apparent child pornography. To date, more than 44 million images and videos have been reviewed by the

analysts in our Child Victim Identification Program ("CVIP"), which assists prosecutors to secure convictions for crimes involving identified child victims and helps law enforcement to locate and rescue child victims who have not yet been identified. Last week alone, CVIP analysts reviewed more than 213,000 images/videos.

NCMEC's Congressional authorization specifically tasks us with providing training and technical assistance to law enforcement agencies in identifying and locating non-compliant sex offenders. NCMEC created our Sex Offender Tracking Team in 2006; some analysts work out of NCMEC headquarters and others, per the request of the U.S. Marshals Service, are detailed to work at the Marshals' National Sex Offender Targeting Center. Upon request from federal, state and local law enforcement agencies, we run searches of non-compliant sex offenders against public-records databases donated to us by private companies for the assistance of law enforcement. We also conduct internal searches for potential links between non-compliant sex offenders and NCMEC cases of child abduction, online exploitation and attempted abductions. We forward all information to law enforcement, who uses it to locate these fugitive offenders. Most of the law enforcement agencies who request assistance from NCMEC have exhausted all of their resources trying to locate these offenders. To date, we have provided more than 6,000 analytical leads packages to law enforcement upon request. More than 1,200 fugitive sex offenders have been located following NCMEC's assistance.

- - - - - - -

In recent years, millions of Americans have followed the devastating stories of Jessica Lunsford, Chelsea King, Amber Dubois, and Jaycee Dugard. These tragic cases highlight an area of great concern: how to effectively track, register and manage convicted sex offenders in our communities. Most of their victims are children and youth. And, according to the National Institute of Justice, child abusers have been known to reoffend as late as 20 years following release into the community.[1]

[1] *Child Sexual Molestation: Research Issues*, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, June 1997.

There has been much attention given to the question of how many children are victimized by sexual offenders. Experts estimate that at least 1 in 5 girls and 1 in 10 boys will be sexually victimized in some way before they reach adulthood, and just 1 in 3 will tell anybody about it.[2] Clearly, those numbers represent a broad spectrum of victimizations from very minor to very severe. Nonetheless, the numbers are powerful testimony to the fact that children are at risk and that we must do more.

There is strong empirical data as well. According to the U.S. Department of Justice, 67 percent of reported sexual assault victims are children[3] – more than two-thirds. And these are only the ones that law enforcement knows about. Most crimes against children are not reported to the police.[4] This means that there are many, many more victims of these heinous crimes than the statistics show.

As policy makers address the issue of sex offenders, they are confronted with some basic realities:

- most sex offenders are not in prison; those who are tend to serve limited sentences;
- sex offenders represent the highest risk of reoffense; and
- while community supervision and oversight is widely recognized as essential, the system for providing such supervision is overwhelmed.

All states require sex offenders to register; California enacted the first such law in 1947. As of our latest state survey, there are 728,435 sex offenders currently required by law to register their address and other information with law enforcement and update this information as it changes. However, the mobility of offenders and inconsistencies among state registration laws have resulted in as many as 100,000 "missing" sex offenders. Law enforcement does not know where

---

[2] David Finkelhor, *Current Information on the Scope and Nature of Child Sexual Abuse." The Future of Children: Sexual Abuse of Children*, 1994, Volume 4.
[3] Snyder, Howard N., *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, July 2000, page 2.
[4] *1999 National Report Series: Children as Victims*, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, May 2000, Page 7.

these missing sex offenders are, yet they are living in our communities. The number of offenders required to register will continue to increase as new cases go through the criminal justice system.

State and local law enforcement agencies are struggling with these challenges. Yet, they benefit from strong federal cooperation in their efforts. The U.S. Marshals Service provides an invaluable service in tracking down fugitive sex offenders. In addition, when the U.S. Marshals or a state law enforcement agency alerts INTERPOL Washington, the U.S. National Central Bureau, that a registered sex offender is planning to travel abroad, INTERPOL notifies the relevant foreign law enforcement agency. When INTERPOL is notified that the sex offender leaves the foreign country, it will inform the relevant U.S. law enforcement agency.

In 1994 Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Predators Act, mandating every state to implement a sex offender registration program. However, by 2006, even though all 50 states, the District of Columbia, and some U.S. territories and Indian tribes had created sex offender registries, there was still a striking lack of consistency and uniformity. In response, Congress passed the Adam Walsh Child Protection and Safety Act in July of 2006 in an effort to enhance and tighten the sex offender registration system. Title I of the Adam Walsh Act is the Sex Offender Registration and Notification Act (SORNA).

By correcting the serious discrepancies among jurisdictions, SORNA will prevent sex offenders from "forum-shopping" in order to remain anonymous. The offenders who take advantage of these loopholes are attempting to evade their registration duties – which could present a threat to the safety of our communities. However, despite Congress' intent, the goals of the Adam Walsh Act/SORNA remain unmet today.

The Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) Office is authorized to determine whether a jurisdiction has substantially implemented SORNA. The SORNA provisions apply to all 50 states, the District of Columbia, 5 U.S. Territories, and 192 Indian tribes. According to the SMART Office website, 4 states, 2 Indian tribes, and 1 territory have achieved substantial compliance with SORNA: Delaware, Florida, Ohio, South Dakota, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes

and Bands of the Yakama Nation, and the Territory of Guam. The remaining jurisdictions are still working to achieve compliance with SORNA.[5]

Implementation of SORNA has been challenging for the jurisdictions. It has required them to make fundamental changes to their existing sex offender registration systems. These changes are dependent upon resources and commitment from both the executive and legislative branches of state governments. These efforts were delayed because the Guidelines on SORNA Implementation were not issued until 2 years after the law was enacted – leaving them without clear direction on where to begin until mid-2008.

We are pleased with the efforts of all the jurisdictions to work toward implementation. The work that has been done in the states is readily apparent. According to the National Conference of State Legislatures:

- 41 states enacted SORNA-related legislation in 2009;
- 28 states enacted SORNA-related legislation in 2010; and
- 23 non-compliant states are currently working on legislation that will bring them closer to achieving substantial compliance of SORNA.

Despite these efforts, we understand that states continue to face challenges to implementing SORNA. In April 2009 SEARCH, the National Consortium for Justice Information and Statistics, conducted a survey of states in order to determine what barriers were preventing states from implementing SORNA. Forty-seven (47) states responded to the survey. The obstacle most commonly sited by the responding states was SORNA's juvenile registration and reporting requirements, reported by 23 states. The second most common hurdle for states was the retroactive application of SORNA, reported by 20 states. Seven (7) states reported the tier-based system as a factor and 7 states cited cost as a barrier to implementation.[6]

In January of this year the Attorney General published Supplemental Guidelines that addressed the concerns about juvenile registration and retroactive application. We are optimistic that these

[5] http://www.ojp.gov/smart/newsroom.htm
[6] SEARCH Survey on State Compliance with the Sex Offender Registration and Notification Act (SORNA). (April, 2009). Retrieved from www.search.org/files/pdf/SORNA-StateComplianceSurvey2009.pdf.

changes will enable many more jurisdictions to come into compliance with SORNA. In addition, these changes demonstrate the Attorney General's commitment to helping states achieve substantial compliance. Congress has appropriated funds for grants to states that are critical to their compliance efforts, as well as key funding to the U.S. Marshals for their Adam Walsh Act responsibilities. We hope that Congress will remain committed to funding these efforts.

Congress passed the Adam Walsh Act to tighten our sex offender registration system and better track registered sex offenders in order to protect our children. States are required to make significant changes in order to come into compliance with SORNA. We want to recognize the enormous progress that has been made in a relatively short time. There is still work to be done. However, we are encouraged by all the jurisdictions' efforts and the SMART Office's continued commitment to help them achieve compliance.

The goal of building a better, more unified sex offender registration system is well within reach.

Thank you.

Mr. SENSENBRENNER. Representative Colloton.

TESTIMONY OF PATRICIA COLLOTON, CHAIR, CORRECTIONS AND JUVENILE JUSTICE COMMITTEE, KANSAS HOUSE OF REPRESENTATIVES, LEAWOOD, KS

Ms. COLLOTON. Thank you, Mr. Chairman.

Chairman Sensenbrenner, Ranking Member Scott, and Members of the Subcommittee, thank you for the invitation to testify today about the Adam Walsh Act and efforts by States to implement the Sex Offender Registration and Notification Act, SORNA.

As Chair of the Corrections and Juvenile Justice Committee in the Kansas House, I have focused my time in the legislature on protecting those who are vulnerable and holding offenders accountable for their crimes. I believe Kansas is one State that, like many others, is working diligently to walk the line between implementing the policies established by Walsh and policies developed within Kansas over many years that address our specific needs.

Kansas has a longstanding commitment to the safety of our citizens, of course, and then particularly to our children. Seventeen years ago, Kansas passed its Sex Offender Registration Act which created a Statewide registry for specified sexual offenders available for law enforcement use. As of last year, over 5,000 sex offenders are in the Kansas registry. We include all sexually violent crimes and all crimes involving children under 18 years of age in our registry. We have passed Jessica's Law, a mandatory hard 25 years for sex offenders, and we made failure to register for 30 consecutive days a prison-level felony. These policies reflect Kansas is serious about registration compliance.

We have also learned that keeping Kansas safe from the threat posed by known sex offenders requires more than a good registry; it requires an entire coordinated system of assessment, management, and supervision that starts from the day the offender walks into the courtroom and extends through their ultimate release into the community. Kansas has legislation ready to proceed that would bring us more into line with the standards set forth in Walsh. We have every intention of complying with Adam Walsh by enabling our registry to link to the nationwide SORNA database.

Even with our sincere commitment to comply with the Herculean efforts that we have taken, bringing our State into compliance is a time-consuming and sensitive process. We have set up a State working group to assist us with determining the scope of our implementation package. We set up that State working group in 2006 and then waited for the very first regulations to come out in 2008.

What we cannot guarantee is that the changes that we have put into the legislation, the bill before my Committee to be heard later this week, will be adopted wholesale or without change, despite the threat of losing that Byrne JAG money.

So we need to applaud the SMART Office. They have worked extremely hard with Kansas and other States. They have been courteous and professional. They have gone through many different issues with us, and we have a package that we have worked with them. We just don't know if we can whip it through the legislature this session.

While only seven jurisdictions have been classified as compliant with Walsh, there has been significant work done and progress that should not be overlooked. Over 250 pieces of legislation have been passed across the country since 2006. What you implemented with Walsh, Mr. Chairman, and those of you who supported it, was a whole bevy of pieces of legislation that enact pieces of the Walsh compliance picture.

Why the delay? There are several issues. First is timing. Congress intended to give jurisdictions 5 years to come into compliance, but the implementing guidelines didn't come out for 2 years, 2008, leaving these jurisdictions only the 3 years to demonstrate substantial compliance.

Additionally, in January of this year, significant SORNA implementation issues were finally clarified in the final supplemental guidelines released by the Attorney General. Now, those guidelines are very helpful. And I agree with what Mr. Allen just said. They make compliance very, very possible. But they came out in January of this year. States simply need more time. Even a State like Kansas that has written and introduced a bill needs more time to address the SORNA requirements in full.

Secondly, the second issue that we have concern is that juvenile registration. A number of States in compliance with other requirements of SORNA are hesitant to adopt the juvenile offender notification requirements. Many lawmakers from across the country on both sides of the aisle oppose lifetime registration and public notification for juveniles, especially because juveniles that exhibit problem sexual behavior are less likely to re-offend and more likely to benefit from treatment and intervention.

In summary—is that a hint?

Mr. SENSENBRENNER. Yes.

Ms. COLLOTON. In summary, the costs are great, but the benefits of that national portal are excellent. We are working hard to comply. But given the whole process, we need more time. We consider the Adam Walsh a benefit to us, and we are working to get there.

Mr. SENSENBRENNER. Thank you very much, Representative Colloton.

[The prepared statement of Ms. Colloton follows:]

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

STATE CAPITOL, ROOM 167-W
TOPEKA, KANSAS 66612
(785) 296-7531
pat.colloton@house.ks.gov

COMMITTEE ASSIGNMENTS
CORRECTIONS AND JUVENILE JUSTICE, CHAIR
EDUCATION
JUDICIARY
JOINT COMMITTEE ON CORRECTIONS AND
JUVENILE JUSTICE OVERSIGHT, CHAIR

PAT COLLOTON
28TH DISTRICT

2513 W. 118TH STREET
LEAWOOD, KANSAS 66211
(913) 339-9246
pat@patcolloton.com

Statement by

Representative Pat Colloton

Kansas State Legislature

"The Reauthorization of the Adam Walsh Act"

February 15, 2011

Subcommittee on Crime, Terrorism and Homeland Security

Committee on the Judiciary

U.S. House of Representatives

Chairman Sensenbrenner, Ranking Member Scott, and Members of the subcommittee, thank you for the invitation to testify today about the Adam Walsh Act and efforts by states to implement the Sex Offender Registration and Notification Act (SORNA).

The most important thing that a public servant can do in service to their state is to promote the health and safety of their citizens. Sexual violence represents a threat to our

communities – in particular the children of our communities – with devastating, and long-lasting consequences. As chair of the Corrections and Juvenile Justice committee in the Kansas House, I have focused my time in the legislature on protecting those who are vulnerable to harm and on holding offenders accountable for their crimes.

As a Republican, I believe in keeping government costs and programs under strict control, but I also believe there is an important role for both the state and federal governments in protecting our children from the threat of sexual offenders. And from my experience as a member of several national public safety working groups and taskforces, I have heard policymakers from both parties and every affiliation agree that our national system of information exchange and community notification related to sex offenders who reside and move between our states can be improved.

Like many policymakers, I was filled with great hope during the passage of the Adam Walsh Act (AWA) that the federal government was finally going to address long-ignored gaps in our national system of coordination and sharing of information regarding sexual offenders.

SORNA passed as part of the Adam Walsh Child Protection and Safety Act of 2006 creates standards for sex offender registration and notification programs in states, tribes, and territories.

SORNA requires sex offenders to register (in some cases regularly and in person) with their local law enforcement agency. Also, they must notify the appropriate law enforcement agency if they travel or change residence, employer or school. States, tribes and territories are required to put juvenile offenders convicted of certain violent sex offenses on their law enforcement registry for life (or 25 years if reduced by a court). A state, territory or tribe may decide to make their juvenile registry accessible to the public or only to law enforcement. Jurisdictions must also examine the past criminal histories of any felon reentering the criminal justice system, as well as all individuals currently incarcerated, on probation or on parole.

States and territories failing to "substantially implement" SORNA by July 27, 2011 will lose 10 percent of their Byrne Justice Assistance Grant program (Byrne JAG) formula grant annually, beginning in FY12. For states and local law enforcement, Byrne

JAG is the cornerstone federal justice assistance program. A tribe that fails to implement must cede operations of its sex offender registry to the state in which the tribe resides, conferring tribal civil and regulatory jurisdiction to the state where it has never before existed.

It is also important to acknowledge that the AWA has a number of elements that can be implemented with relative ease. For example, it is incredibly useful for states to know how their criminal statutes comport with those of other states. This information is used by our own public safety and law enforcement entities that are tasked with negotiating other state policies in interstate compact transfers and jurisdictional crossover, as well as with determining the liability unto the state for purposes of supervision or registration. We believe this type of information sharing along with the joint access to national databases can be invaluable in carrying out our duties.

Today there are seven jurisdictions in compliance with AWA: four states (OH, FL, DE, SD), two tribes (the Confederated Tribes of the Umatilla Indian Reservation and the Yakama Nation), and one territory (Guam).

I believe that Kansas is one state that, like many others, is working diligently to walk the line between implementing policies established by the Adam Walsh Act (AWA) and policies developed within Kansas that address our specific needs. As I address the story of Kansas, I would urge you to consider the ways in which we as states can work alongside the federal government in developing the best public safety policies and enhancing collaboration.

Kansas Initiatives

Kansas has a longstanding commitment to the safety of our citizens, and in particular the safety of our children. A brief history of our approach to sex offender registration and notification will show the steps our state took to deal with this widespread problem and how it fits into our unique legal system.

In 1993, Kansas passed its Sex Offender Registration Act, which created a statewide registry of specified sexual offenders that is available for law enforcement use. A year later, the state legislature expanded this act to give the public access, through the local sheriff's office, to some registrant information. We believed that the public had a

right to know where offenders were living and we wanted them to have access to resources that would help them think about how to use this information in keeping their families safe. Since that time, registration information has been moved online to encourage public access.

In our state, a person is required to register for at least 10 years (and to register for a lifetime for certain crimes) upon their first conviction of specified sex crimes. If convicted again, the individual faces lifetime registration. Those offenders coming from out of state are required to register for the duration of their out of state requirement or the Kansas requirement – whichever is longer.

As of last year, more than 5,000 sex offenders were on the Kansas public registry.

Kansas has demonstrated commitment to the goals of AWA. We include all sexually violent crimes and all crimes involving children under 18 years of age in registration. We have passed Jessica's Law (a mandatory 25 year sentence for sex offenders) and made failure to register for 30 consecutive days a felony at a level in our sentencing grid that presumes imprisonment. Every consecutive 30 days an absconder is hit with a new prison-level felony. As these policies reflect, Kansas is serious about registration compliance.

Keeping Kansas safe from the threat posed by known sexual offenders requires more than a good registry; it requires an entire coordinated system of assessment, management, and supervision that starts from the day an offender enters the courtroom and extends through their ultimate release back to our communities.

Our system has been developed, refined and reworked over the course of more than a decade and a half. Legislative committees like mine have worked exhaustively with researchers, public safety professionals and community members to make our laws respond to the specific and unique needs of Kansas. Even for a relatively small state like ours, it has taken a great deal of time and resources to create a coordinated system of sex offender management that includes a cohesive registration and notification program.

AWA Compliance and Kansas

So, it is with great care and extensive thought and effort that Kansas has worked to comply with AWA. This means diving into statutes and policies that took years to craft, and trying to determine how they comport with Federal standards that are written broadly, and disconnected from the language and crime definitions that we use.

While that poses a challenge, it is certainly not an insurmountable obstacle to implementation. Perhaps the larger questions that arise have first to do with whether Kansas and other states' policies already meet or exceed the threshold set forth by AWA, and second, if those policies that we believe *exceed* the AWA minimum standards, because of their grounding in an evidence- and science-based approach to classifying offenders, are acceptable as substantial compliance.

Even with our sincere commitment to comply and the Herculean efforts currently underway, bringing our state into compliance is a time-consuming and sensitive process. We have set up a state working group to assist us with determining the scope of our implementation package that would include the reclassification of crimes, changes in our notification practice, participation in the national portal and a host of other changes designed to make Kansas comply. What we cannot guarantee is that these changes will be adopted wholesale, or in one complete package – despite the threat of losing vital JAG/Byrne funding.

Nationwide Progress

While only seven jurisdictions have been classified as compliant with AWA, there has been significant work done and progress that should not be overlooked. Over 250 pieces of state legislation have been passed across the country since 2006 that address elements of the AWA.

In at least one important way, AWA has started to deliver on its promise: information-sharing portals like the Sex Offender Registration Tips (SORT) program, are providing new and important ways for states, territories and tribes to communicate and coordinate. In other ways, however, AWA still has a long way to go.

The SMART office and the Department of Justice have been working to address the implementation challenges that have been identified by policymakers and practitioners. Final Supplemental Guidelines released in January of this year have gone a long way to address some of the most challenging elements of SORNA implementation including clarifying juvenile public notification, and how the law can be retroactively applied.

I also need to applaud the SMART office for their courteous and professional interactions they have had with my state – I have found them to be helpful and dedicated to finding solutions to some challenging problems.

I think it is fair to say that progress is being made both by the Federal government in trying to make these policies functional and by state governments in their efforts to try to fit this into their respective systems. Sometimes this has felt like fitting a square peg into a round hole, but it is also an exercise that forces us to go back and confirm that we are doing the best we can to keep our communities safe.

Why the delay?

So, why has this been so difficult for states? Why is there the impression that it is taking states too long to comply? All states, territories and even some tribes have sex offender registries of their own. Synchronizing their laws with the requirements of SORNA requires often complex changes to state and tribal law and, in many cases, changes in key policies regarding sex offender management. All states have passed new sex offender registry laws in recent years; some of these changes were specifically intended to assist with SORNA compliance. Many state legislatures now in session are trying again to pass legislation that can be deemed as having "substantially implemented" SORNA requirements.

There are several requirements have also proven to be stumbling blocks for many states:

Timing

Congress intended to give jurisdictions five years to come into compliance but the implementing guidelines from the Department of Justice were not issued until 2008,

leaving jurisdictions only three years to demonstrate "substantial implementation." Additionally, just this year in 2011, many significant SORNA implementation issues were clarified in the Final Supplemental Guidelines released by the Attorney General related to many elements of implementation, most notably juvenile registration and the retroactive application of the law. Many states have reasonably been waiting for these important and substantial clarifications to the law before embarking on complex statutory changes.

Moreover, those states that maintain government-to-government relationships with tribes who are included in SORNA need to have adequate time to thoroughly and respectfully negotiate what compliance should look like in each jurisdiction.

Like here in Congress, there have been significant changes in state legislatures that might delay the implementation of SORNA. This year, 675 new state legislators and 29 new Governors took office across our country. Also, in 19 states, control of one or both chambers changed parties. These changes alone underscore how difficult it might be to pass complicated and potentially controversial changes to sex offender management laws.

Juvenile Registration

A number of states in compliance with the other requirements of SORNA have been hesitant to adopt the juvenile offender notification requirements. Many lawmakers from across the country and both sides of the aisle are opposed to lifetime registration and public notification for juveniles, even for Tier III (the most violent) offenses. Research indicates that juvenile offenders tend to engage in less serious and less aggressive behaviors and may be more responsive to treatment than their adult counterparts due to their emerging development. While the Final Implementation Guidelines issued by the Attorney General in January of this year went a long way to address these challenges, some states may still reject attempts to put juveniles on public sex offender registries.

Two years ago, the Council of State Governments passed a resolution expressing concern about the juvenile provisions in AWA. Many of the other associations representing state governments, as well as groups dedicated to preventing juvenile delinquency, have done the same. While CSG supports holding a juvenile offender responsible for his or her actions, it does not agree with SORNA's treatment of juveniles

in the same manner as adult offenders. There is significant research that shows success in treatment of juveniles who exhibit problem sexual behavior, they are less likely to reoffend and more likely to have been victims of sexual abuse or assault themselves.

Tiering and Risk Assessment

SORNA requires states, territories and tribes to harmonize categories of offenses so offenders who commit similar crimes will be treated similarly across jurisdictions. This "tiering" of offenses is based on the adjudicated sentence. Many states use a risk assessment tool to determine priority and eligibility for post-conviction services, but a few states use risk assessment to determine whether and for how long an offender should be placed on its registry in an attempt to make notification laws conform with supervision practices. Those states that have adopted this approach—and many others that are considering adopting similar practices—believe this approach works best in their state and represents a better approach to protecting public safety.

Our state, like many others, has had to change our approach to community notification as a result of AWA. We believe that the best information available from experts around the country suggests that supervision and management of offenders should be based upon the risk that is posed, as indicated by scientifically validated risk assessments. If we, as policymakers and public safety officials, are making decisions to supervise offenders based on these tools, it would only make sense that communities are notified about the potential risk an offender poses based on this information. But this flies in the face of the AWA approach, which does not require that community notification of offenders conform to risk–based assessment. In essence, because AWA classifies community notification tiers solely upon the crime of conviction, we lose the ability to notify the community about an offender's risk to the community using the most accurate tools currently available.

At first blush, it makes sense that those convicted of the most wicked crimes should be under the highest scrutiny. Of course, as prosecutors and law enforcement are often quick to point out, many people are convicted of much lesser crimes than they actually committed. Accordingly, using the crime of conviction to trigger classification can undermine public safety by under-classifying individuals.

Classification based upon risk, on the other hand, ensures much better information is provided to the public because those offenders who show that they pose higher, more long-term risk—despite what crime they plead down to—are going to be on the registry much longer. Risk-based classification also allows the public to differentiate between those offenders who pose the highest risk and those who may represent a lesser – but still real – threat.

So our state, and others, must wrestle with the requirements under AWA that steer us away from what national experts and people on the front lines of the criminal justice system tell us are the best practices in this area.

We also have to contend with the influx of prisoners into our system whose offense is failure to register. While we work tirelessly to hold offenders accountable and maintain their registration status, we also know based upon the available research that failure to register is NOT linked to an increased risk of offending. As such, a state like mine pays twice for offenders' failure to register: we spend tremendous resources tracking them down and then spend a great deal more putting them back in prison despite the fact that their risk to the public likely did not change in that period.

Reporting and Notification

In our state we believe that our current registration and reporting requirements strike the right balance between vigilantly tracking the location of registrants and use of public funds to manage that process. We feel that the dramatic increase in reporting requirements outlined in SORNA increases the potential for non-reporting through administrative snafu's like simple scheduling challenges without any adding real public safety benefit (and it's the safety of the public which should be our most important measurement), particularly because changes must be reported in three days and in person.

Kansas currently gives 14 days for offenders to report changes in their status. The Committee may want to consider a combination of types of notification and allow states the flexibility to amend the notification requirements so they are appropriate for that jurisdiction.

Cost

Many states grappling with record budget deficits simply cannot consider any legislation that carry costs beyond what the state is already spending, which is precisely what passage of SORNA statutes in most jurisdictions will require—without a clear public safety benefit.

In the last 15 years almost every state, territory and tribe in the United States have made significant and sweeping investments in protecting the public from sexual offenders through statutory reform, sentencing changes, new offender management approaches and building capacity through staff training and coordination. We made these investments because we take the safety of our communities seriously and continue to seek guidance from researchers and public safety practitioners to improve our approach. Despite these commitments, all states, territories and tribes are concerned about the sweeping costs of SORNA compliance. Particularly in this economy, no state can afford a significant new regulatory unfunded mandate that will change the public-safety approaches that states have already undertaken. Also, as most tribes will be starting from scratch, it will be very costly for them to build the infrastructure necessary to comply with the Act. SORNA requires new information technology systems and, in some cases, overhauling existing registration systems containing large numbers of registered offenders. It will also require states to reclassify tens of thousands of offenders to conform with new notification requirements. SORNA also places considerable and in some cases insurmountable new burdens of tracking and reporting on local and tribal law enforcement agencies – burdens that, as I mentioned above, might not pay off in an increase in public safety when compared with existing practices.

When considering the cost of implementation, the threat of losing funds if AWA is not implemented is certainly something that compels states to continue to move forward despite the obstacles that may exist. It should be noted, however, that the funds in jeopardy would, in many cases, punish those who have no control whatsoever on the implementation of such policy.

In Kansas for example, the Department of Corrections uses Byrne JAG funds to provide victims of crime with resource referrals and assess victim safety needs. The funds also help establish a collaboration manual for community corrections agencies,

victim/witness coordinators and direct victim service providers, and educate stakeholders about ways to enhance victim safety while the offender is under community corrections probation supervision. In other states, the funds are used to promote drug enforcement, sexual assault and domestic violence victim services and specialized investigation teams—services that would be damaging to public safety if lost.

With that in mind, it is troubling that states that don't have the resources to accommodate what is a tremendously costly unfunded mandate will have to watch as the very services that our criminal justice systems rely upon are cut even further in a punitive measure for not having enough money to enact new policies. In some states, the money that they risk losing from the Byrne JAG penalty is actually used directly for victims of sexual and domestic violence. States do not want to penalize public safety and victim service dollars because of the complex and unfunded changes that SORNA contemplates.

In some ways, states are facing an impossible choice: abandon evidence-based approaches to public safety and appease the Federal government, or continue to implement the most innovative approaches to sex offender management and notification and suffer the painful loss of funding that helps victims rebuild their lives, helps catch criminals who prey upon our most vulnerable citizens, and helps to successfully prosecute some of the most complicated and painful crimes.

Despite our differences, I am proud of my own state and my colleagues as we do our due diligence in finding a common ground that we can stand on. I believe that we ALL have the best interest of our communities in mind, we simply have different philosophical approaches to what that means. I remind myself often that when the AWA was developed, it was meant to be a starting point, a bare minimum. It was the floor upon which states should build. That helps me in understanding why the DOJ and SMART offices are working so hard to promote these policies. Please don't confuse our caution in overturning our approach to public safety as a lack of seriousness on our part. There is nothing more serious to us as policymakers than the safety of our children.

Recommendations

As the Committee considers reauthorization of the Adam Walsh Act, please consider the following changes and improvements to the statute:

- **Deadline Extension** - Up to two more years for states and five more years for tribes to allow legislatures more time to assess and address complex policy issues.
- **Penalty** - Allow the Attorney General to apply a penalty that reflects a jurisdiction's level of effort and compliance, so as to encourage partial compliance rather than forcing states to opt entirely out of SORNA. Rather than weakening SORNA, it would strengthen it, as states that are tempted to walk away from SORNA entirely – if they know they cannot comply with every requirement – will have an incentive to come as far into compliance as possible. Consider mitigating the penalty for states that attempt to participate in the SORT information-sharing portal, even if they are not found to be in overall compliance.
- **Tribal Sovereignty** – Congress should consider delinking state and tribal compliance with SORNA in a way that respects tribal sovereignty, while protecting public safety on tribal lands.
- **Tiering** – Allow states that use risk-based tiering to be found compliant with SORNA.
- **Notification Requirements** – Allow flexibility for states in determining the notification requirements for offenders.

Conclusion

I think it's critical that we recognize we are all on the same side. Congress and state governments want to protect children, prevent sexual assault and abuse, and hold offenders accountable.

We are working in good faith with the Federal government to comply with the requirements of the AWA. And despite the lack of adequate federal dollars to assist us, 49 states are attempting compliance. As you move forward, please help us in bridging the gap between where we believe the cutting edge of criminology is leading us and where you want to ensure continuity amongst states.

We all want to do what is right to protect our children from the threat of known sexual offenders. It is my hope that states and tribes, together with the federal

government, can find a way to build on what we've been able to accomplish thus far and plot a path forward to safer communities.

Mr. SENSENBRENNER. The Chair will now recognize Members for 5 minutes apiece, alternating by sides, in the approximate order in which the Members appeared for the hearing, starting with me.

Representative Colloton, if you can't make this deadline, how much more time do you think Kansas will need to come into substantial compliance?

Ms. COLLOTON. I would give us 2 more years in the sense that it may well be that we start to vet the policy changes contained in the agreement we have reached with the SMART Office, and that we are unable to pass it this legislative session. Remember, we are a 90-day citizen legislature. We do meet every year, thankfully. Some of the States only meet every other year. So I would say if you would give us next session, we may well do it. If you are including all States, I would say you need a 2-year time frame for those tentative agreements, particularly under the January guidelines, to come into fruition and be passed in legislation.

Mr. SENSENBRENNER. Do you support the carrot-and-stick approach, where the stick is reducing Byrne JAG funding?

Ms. COLLOTON. Not fully, in this sense; that much of that money is used for victim treatment, for community corrections treatment of sex offenders when they reenter into the community. To take that kind of money away when it is the very money that helps us control, track, and monitor, to do what is smart—monitor and track—I think is counterproductive. But what I would see as kind of being fair about it might be where you give some credit for those States that have done at least a partial compliance with SORNA. Every State I think has pretty much done some of the pieces of SORNA.

I mean, you have unleashed here, with the Adam Walsh Act, a whole variety of advances in tracking, apprehending, and then monitoring sex offenders. So we are well on our way, I think we are. And I would give partial credit—perhaps determined by the SMART Office—and maybe take a little away. For example, you are thinking 10 percent of Byrne JAG money. Maybe you would give 90 percent, 80 percent, 50 percent credit, and not take it all away. It goes for very good causes related to sex offenses.

Mr. SENSENBRENNER. Thank you very much.

Mr. Allen, what is your view on how States are complying and your response to the additional 2-year proposal that Representative Colloton has put on the table?

Mr ALLEN. Mr. Chairman, I think Representative Colloton makes a very good point. And we, too, have been concerned with the total loss of Byrne JAG funds for States that have really made a substantial effort and have not quite gotten there. So some proportionate allocation of that we agree makes sense.

Our primary concern about extension is that our sense is that States have really worked diligently, many States have worked diligently to come into compliance by July of 2011. Our concern with an extension is that I fear if the extension is provided, States will just delay further in their process—which I don't think is unheard of in these kinds of processes for a variety of issues. So I think there is a real balancing act here.

We certainly agree with Representative Colloton's point about the fact that effectively States have only had 3 years to come into compliance. And I think she makes the point—and certainly the data we have from the leading associations indicates—that most States have really made diligent efforts, including passing various pieces of the legislation, to try to get to compliance. So I think that is—not to pass the buck, but I think that is something Congress

needs to weigh; and that is, an extension may effectively reduce the total number of States that are compliant as of July of this year.

Mr. SENSENBRENNER. Well, I believe in deadlines, and excuses are going to have to be valid if there is to be an extension considered. I will look at all 50 States and a good percentage of the tribes to make a determination on that. I really don't think 2 years is appropriate, as I have a feeling that people won't get worried about this until January of 2013.

Mr ALLEN. That is exactly——

Mr. SENSENBRENNER. And Governors do like to call special sessions of legislatures upon occasion.

My time is up. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, we just heard comments about losing all of the Byrne Grants. Ms. Doran, if a State is out of compliance under present law with no extensions, how much of the Byrne Grant would they lose?

Ms. DORAN. If a State has not complied by July 26, 2011, and it has been determined that they have not substantially implemented, the penalty is 10 percent of their Byrne JAG funding. However, of course, the Act provides for a reallocation. If a State is continuing to work toward substantial implementation of SORNA, they may apply for that 10 percent back to their State toward specifically targeted SORNA implementation activities.

Mr. SCOTT. Thank you.

Ms. Hylton, Mr. Allen indicated that there are approximately 100,000 people on the registry that are out of compliance. What do you do with that information?

Ms. HYLTON. Sir, we continue to work diligently across our partnership relationships with the SMART Office, with NCMEC, and our State and local and Federal law enforcement partners to continue to apprehend. Again, I think that we stand in a great position with the Marshals Service to say that of those that were noncompliant, we have actually with our State and local partners either had a direct impact or assisted with the apprehension of over 43,000 sex offenders nationwide. So we continue to work those numbers, and I think——

Mr. SCOTT. You have apprehended and incarcerated 43,000?

Ms. HYLTON. We have assisted or had a direct apprehension of over 43,000 since the Act was passed in 2006.

Mr. SCOTT. Ms. Doran, has the Department of Justice done studies to show the recidivism rate for those States with a registry and those who do not have a registry?

Ms. DORAN. Are you referring to SORNA?

Mr. SCOTT. Right. Does the fact that somebody has to register reduce recidivism?

Ms. DORAN. I am not aware of any studies that have been conducted yet on SORNA and its effects.

Mr. SCOTT. What about Megan's Law?

Ms. DORAN. Under Megan's law, there have been some studies produced under that.

Mr. SCOTT. And what did they find?

Ms. DORAN. The main purpose of registration and notification is, of course, registration for law enforcement purposes and sharing of information, and providing information to the public.

Mr. SCOTT. Does the fact that there is a registry reduce recidivism?

Ms. DORAN. I would have to get back to you on those studies.

Mr. SCOTT. Are there any studies that show whether or not someone who is compliant on a registry versus someone who is not compliant on a registry is more or less likely to offend? In other words, the list of 100,000 that Ms. Hylton is chasing down and incarcerated, is that list more likely to offend than those on the registry that are in compliance?

Ms. DORAN. No.

Mr. SCOTT. No, there is no difference?

Ms. DORAN. That is correct. They are not showing to be more or less likely.

Mr. SCOTT. The fact that you are not in compliance does not mean that you are any more likely to offend than if you are out of compliance; that is the finding of the studies.

Ms. DORAN. That is one study, yes, sir.

Mr. SCOTT. Ms. Colloton, the juvenile issue, why are States reluctant to have juveniles register on these public registries?

Ms. COLLOTON. Well, there are a couple different reasons. One is that juveniles that exhibit problems with sexual behavior are much less likely to re-offend. And their brains are developing; they are much more susceptible to treatment. So I think to treat them and put them on a public registry and put them on registration creates issues for them that are exactly the opposite of the paternalistic juvenile system that we have created in juvenile justice. And I think it is counterproductive.

There is one other thing I would like to——

Mr. SCOTT. When you say "counterproductive," are you suggesting that putting a juvenile on the list would alter their future opportunities such that you are actually increasing the likelihood that they will get in trouble in the future?

Ms. COLLOTON. Yes, absolutely. I think that if that registry is published—and just as of January now, it doesn't have to be published. And that means States will have 6 months, if they believe in that policy, to comply. I believe in deadlines too, but we have 6 months from the final regulations now to July when the penalties start to go into effect, 6 months. And there are still some issues like the juvenile where there really hasn't been a resolution.

The other area that there hasn't been a resolution on that I would like to speak to for just a second is risk assessment. It is important to know that many States who have had registries for a long time do their tiering based on risk assessment. Because just because you have pled down to a low felony doesn't mean that you are a lesser sex offender risk. And the one thing that is really needed here under Adam Walsh in supplemental regulations—and then we would need some time after that to get it done—would be that we allow risk assessment to be used in States as the different tiering.

New Jersey did the very first sex offender act in 1992, they did Megan's Law, the first registry, and they have done tiering based

on risk assessment since then. Adam Walsh is requiring them to change that process and not use risk assessment. That is one other thing that is very much needed and it is critical with regard to juveniles.

Mr. SENSENBRENNER. The gentleman's time has expired.

The gentleman from South Carolina, Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

Ms. Doran, who is responsible for the 2-year lag in promulgating guidelines?

Ms. DORAN. The SMART Office was stood up in 2007. The Act was passed in July of 2006, and the SMART Office was stood up in the beginning of 2007. I wasn't there from the beginning——

Mr. GOWDY. The SMART Office is part of the Department of Justice?

Ms. DORAN. Correct.

Mr. GOWDY. The Department of Justice was around in 2006, right?

Ms. DORAN. Correct.

Mr. GOWDY. So who is responsible for the 2-year lag in promulgating guidelines?

Ms. DORAN. The guidelines first have to be issued as proposed guidelines, and they went through a lengthy and extensive commenting session for that before. And then all of those comments from the proposed guidelines were then accumulated and reviewed. And based on those, they adjusted the final guidelines which were issued in 2008.

Mr. GOWDY. So you think 2 years is a reasonable length of time to take to promulgate guidelines?

Ms. DORAN. The initial guidelines were quite lengthy and complex because, of course, the Adam Walsh Act is quite lengthy and complex. And so I know that the Department of Justice took their time to make sure that they provided all of the information that they could provide to the States——

Mr. GOWDY. Let me rephrase the question. Do you think 2 years is a reasonable amount of time to promulgate guidelines?

Ms. DORAN. I wouldn't have a position on that one way or the other.

Mr. GOWDY. All right.

Ms. Colloton—Representative Colloton, excuse me—I have been listening this morning, and it seems as if there are only two alternatives with respect to juvenile registration. Either we are going to have a public list or we are going to have a law-enforcement-only list.

Ms. COLLOTON. Correct.

Mr. GOWDY. There are other alternatives, correct? I mean, you can have a list where camps could—I mean, you acknowledge it is not just law enforcement that would want this information?

Ms. COLLOTON. Oh, absolutely. And I note within Kansas, when I mentioned those 250 changes in the law and that kind of thing, one of the things that has happened is, of course, these registries are being made available to different agencies that deal with children; as you say, some private organizations that deal with children, and all of that. So yes, there are steps between complete—Kansas had the very first, in 1994, publicly open sex offender reg-

istry. We also, by the way, had the very first, in 1997, Web site registry, but we didn't do it for juveniles. For juveniles, we limited it to very serious—some agencies, some very well-known, well-regarded private institutions that dealt with children.

Mr. GOWDY. Fourteen-year-olds can be prosecuted as adults for homicide, and in some instances incarcerated for up to half a century. So there is no Eighth Amendment issue with respect to public registration; do you agree?

Ms. COLLOTON. Yes.

Mr. GOWDY. All right. So in the course of a minute, you and I have agreed the alternatives are public registration, law enforcement only, or registration where interested groups can ask whether or not this person, this putative employee or hiree is on a list. You and I did it in a minute.

Ms. COLLOTON. That is right.

Mr. GOWDY. Why do we need 3 years? Why 3 more years for implementation? You and I did it in a minute.

Ms. COLLOTON. I was suggesting 2. I think with the tribes, because they don't have the kind of digitized requirements of Adam Walsh, you probably need more than that.

Mr. GOWDY. Why do we need 2?

Ms. COLLOTON. With regard to States, we need 2, and simply for this reason: The final supplemental regs came out in January. What they did is they changed several things——

Mr. GOWDY. Let me stop you right there. Who is responsible for waiting until January to put out the final regs?

Ms. COLLOTON. Well, they came out of the SMART Office.

Mr. GOWDY. Which is part of the Department of Justice.

Ms. COLLOTON. Yes.

Mr. GOWDY. And this law was passed when?

Ms. COLLOTON. 2006.

Mr. GOWDY. And we waited 2 years for regulations and then we waited until January of which year for——

Ms. COLLOTON. This year, 2011. And what I am saying is the SMART Office has been excellent to work with. All last year they worked with a group very hard—and the year before as well. We have a working group to comply with SORNA. It was set up in 2006. It has on it prosecutors, judges, law enforcement, community corrections——

Mr. GOWDY. You will acknowledge the difficulty in convincing people that 5 years is not enough time.

Ms. COLLOTON. We agree 5 years, but it has to be 5 years from when we know what we are supposed to do.

Mr. GOWDY. What is a better motive for compliance than Federal funding?

Ms. COLLOTON. Oh, how about protecting our children? I mean, we absolutely believe that this is an excellent—the national portal that SORNA sets up——

Mr. GOWDY. When you say "protecting our children," are you suggesting—are we going back to the juvenile registration argument?

Ms. COLLOTON. No. What I am saying is——

Mr. GOWDY. Because when you say "protecting our children," that argument can go both ways. I can also ask you why it has taken 5 years.

Ms. COLLOTON. You could also ask me—I am sorry?

Mr. GOWDY. My time is up.

Mr. SENSENBRENNER. The gentleman from Michigan, Mr. Conyers, is recognized for 5 minutes.

Mr. CONYERS. Let's look at the tribe problem with the Indians. I know you are here representing someone that couldn't be here. But none of you have even mentioned the 212 Indian tribes. Is it because you don't know about them or you don't care about them?

Ms. DORAN. The tribes actually have built into the Act a reasonable amount of time after the deadline for them to be able to implement. So they already have some extra time. And the Department of Justice is very committed to working with the tribes to continue to assist them with their implementation efforts.

Mr. CONYERS. Boy, is that standard bureaucratic rhetoric.

Look, you must know, I found out in 5 minutes that the tribes don't get out of anything. The States will reimpose their activity, isn't that right, Mr. Allen, on the tribes? So they are not getting away with a thing.

That is the excuse that you folks come here to the Committee and make us feel that the tribes are okay. The tribes are going to get it in the neck. And if you don't know it, then I am glad we are holding this hearing.

What do you say, Mr. Allen?

Mr. ALLEN. Mr. Conyers, I think the reality is that tribal law has different challenges—the whole issue of tribal sovereignty. There were provisions written into the statute. We have met with the National Congress of American Indians on these issues. Clearly, the SMART Office has dedicated personnel to follow up with the tribes to try to address these legal issues, but there is no question they are going to take more time. And there is also no question that State compliance may effectively roll in some of these tribal governments under that.

So I think the SMART Office has been trying to respond, but there is not a lot of clarity in the initial statute on tribal governance issues.

Mr. CONYERS. Well, the National Congress of American Indians is asking for 5 more years. Do you know that?

Ms. DORAN. Yes, sir.

Mr. CONYERS. Well, why don't you say so?

Ms. DORAN. I do. As I said, the Act itself builds in a reasonable amount of time. And I think that——

Mr. CONYERS. Well, they are asking for it. That doesn't mean they get it.

Ms. DORAN. Correct. But the Act itself builds in an extension of time for them. And, as I have said, the Department of Justice is not going to delegate their responsibilities to the State. The Department of Justice is committed to each and every tribe that is wishing to implement SORNA, to work with them past the deadline to continue their implementation efforts.

Mr. CONYERS. Okay. Now, do you know that the States take over when the tribes can't meet these deadlines?

Ms. DORAN. I am sorry. Can you repeat the question?

Mr. CONYERS. Do you know that the States take over when they don't meet these deadlines?

Ms. DORAN. If a tribe is eventually delegated over to a State for registration and notification, but that is our absolute last resort. The Department doesn't intend to delegate any tribe that has any intention and wishes to work toward implementation. And most tribes are doing so.

Mr. CONYERS. Most tribes are doing so? There are only two that are in compliance out of 212.

Ms. DORAN. That is correct. Quite a few tribes are——

Mr. CONYERS. Well, why are you saying that?

Ms. DORAN. Quite a few tribes are working toward implementation, just like the States are——

Mr. CONYERS. Look, everybody is working toward it. All of the States are trying. Please.

Ms. DORAN. Also, over half the tribes are already in either the testing stage——

Mr. CONYERS. Give me a break, will you, this morning?

Ms. DORAN [continuing]. Or in the actual stage of connecting to the Tribal and Territory Sex Offender Registry System and the National Sex Offender Public Website——

Mr. CONYERS. All right.

Ms. DORAN [continuing]. Which is half of their requirement.

Mr. CONYERS. Look, thank you very much.

Mr. Allen, can you show some sympathy for the juvenile problem? It is going to the Supreme Court. And attorney Nicole Pittman, who we wanted as a witness but we only have a rule of four—it looks like there is a constitutional problem as big as this room involved in that Supreme Court case coming up. Could you show us a little sympathy, even just for the hearing?

Mr. ALLEN. Well, no, Mr. Chairman. I think there has been that kind of sympathy. And I think it is reflected in Attorney General Holder's supplemental guidelines. What the provisions——

Mr. CONYERS. Boy, here we go again.

Mr. ALLEN. No, no, no. I mean——

Mr. CONYERS. Well, you know, he made some changes. I am glad he made some changes. But that doesn't even begin to deal with it.

Mr. SENSENBRENNER. The time of the gentleman has expired.

The gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Ms. Doran, following up on the gentleman from Michigan's question, how many States and tribes do you expect to comply with this Act by the July 2011 deadline?

Ms. DORAN. By the July 2011 deadline, we are very reasonably comfortable that between 10 and 15 additional States will be able to implement by July. In other words, they don't have any large, substantive barriers or challenges, and they feel comfortable that their legislatures are going to be able to pass this.

Mr. GOODLATTE. And that is in addition to how many are in compliance now?

Ms. DORAN. In addition to the four States and the two territories and the tribes. We think we have—we do believe that an additional between 25 and 30 States may or may not be able to meet the deadline. It is really too soon to tell.

Mr. GOODLATTE. And how about the tribes?

Ms. DORAN. These are all in session.

The tribes are definitely not going to be in the same position. We have reviewed materials for about 50 tribes, at this point. And, as I said, as I was telling Chairman Conyers, they are all connecting to the sex offender registry system. But they are going to need more time. The Department is committed to doing that, under the reasonable amount of time extension under the Act.

Mr. GOODLATTE. Okay. And, in the last 3 years, your office has awarded over $25 million in implementation and planning grants. How has this money been used by the jurisdictions? First of all, how has it been distributed? Are all 50 States and 212 tribes availing themselves of this money?

Ms. DORAN. It is a discretionary grant program for the Adam Walsh Implementation—the Support for Adam Walsh Implementation Grant Program. It has been a discretionary program since 2007. Every eligible jurisdiction, all 248, are eligible to apply.

Mr. GOODLATTE. How many have?

Ms. DORAN. To date—I have the information here. It has been submitted. To date, I would say we have, total—I would have to get you back the exact number. But what I can tell you is, as of last year, we were able to fund every jurisdiction that applied last year.

Mr. GOODLATTE. But you don't know how many applied?

Ms. DORAN. Oh, last year, we had 28 jurisdictions.

Mr. GOODLATTE. And over 3 years, do you know how many?

Ms. DORAN. I cannot give you an exact number right now, but I can get that back to you.

Mr. GOODLATTE. Let's say we are three times that number, around 75. Is that an indication that there are 175 jurisdictions that think so little of complying with this law that they are not applying for the funding but they are still complaining about not being able to comply? What is the——

Ms. DORAN. No, not necessarily. Out of the seven jurisdictions that have implemented, four of those didn't receive any Federal funding.

Mr. GOODLATTE. Okay. Very good.

And your office has also provided software platforms for the States and tribes to use to build their capacity to feed information into the national sex offender registry. What has been the impact of that software?

Ms. DORAN. The software has been an enormous success, particularly for the tribes. I know I have talked about it a couple of times, but the tribe and territory sex offender registry system has been enormous for the tribes. Over half of them are now in the testing stage or using it.

And, out of the great success from that, the States asked if they could also have a similar tool developed for them. And we developed the Sex Offender Registry Tool. And quite a few States, as many as 10 right now, are testing it or looking into it and are using that tool, as well, for their registry system.

Mr. GOODLATTE. Thank you.

Ms. Hylton, are there any additional law enforcement authorities that would help the Marshals Service to better investigate and track sex offenders?

Ms. HYLTON. Yes, there is, and thank you for that question. The Marshals Service would greatly benefit from documentary administrative subpoena authority.

You know, as you can appreciate in any investigation, but one of so sensitive in protecting our children, the ability to immediately react during an investigation is critical to the apprehension of the fugitive or the noncompliant sex offender. And so, having the ability to have documentary administrative subpoena would allow the investigators real-time information that is critical to apprehending the individual. That would be the greatest asset we could receive at this point to take our Adam Walsh Act responsibilities to a higher level.

Mr. GOODLATTE. Let me get one more question in before my time runs out.

Are there other agencies that have the ability to issue administrative subpoenas? And have they been used without overreach on their part? Do they have a good track record?

Ms. HYLTON. Thank you. I appreciate that.

Yes, I believe that there are, within the Department of Justice, the DEA and FBI have the ability. It has proven effective. I cannot speak at this point to the integrity of their processes. But, certainly, if given that ability, what we are really looking for is documentary, which is an asset that would provide us limited responsibility but allow us to get what we need on the fugitive investigation. So it would serve vital to us. And we would look at the best practices when we implement that. And I am confident that we can keep the integrity of the authority intact.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Ms. HYLTON. Thank you.

Mr. SENSENBRENNER. The time of the gentleman has expired.

The gentleman from Georgia, Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman, for holding this very important hearing, one that affects the lives of many people, many of them who don't belong on a child sex registry or any sexual registry.

And what we have here today is an act; for some reason, it is called the Adam Walsh Act. I don't know if there has ever been any evidence uncovered that would establish the fact that this horrific murder of Adam Walsh had anything to do with a sex act. But, nevertheless, that is the name of the Act that we are dealing with here today.

That act is pretty strict and pretty broad in scope. It requires that all persons convicted of a sex offense must be placed on sex offender registry. Is that correct? Is that true?

Mr. ALLEN. Above a threshold. There is a threshold of severity that requires—you would have to—so very minor offenses would not get you on the sex offender list.

Mr. JOHNSON. Well, certainly, a definition of what constitutes a sex offender act is any criminal offense that has an element involving a sexual act or sexual contact with another. So that means, does it not, that just simple possession of child pornography would require the placement automatically of a defendant or a convicted person on the sex offender registry? Isn't that correct?

Ms. DORAN. No, that is not correct.

Mr. JOHNSON. You don't think so?

Ms. DORAN. If it is a Tier 1—a Tier 1, they have to register for the law enforcement database, the national sex offender registry——

Mr. SENSENBRENNER. The Chair would remind members of the audience that they are here as guests of the Subcommittee, and expressions of support or opposition to any of the statements are specifically prohibited by House rules.

Mr. JOHNSON. And if I might get back my 20 seconds.

Mr. SENSENBRENNER. You may.

Mr. JOHNSON. Okay, thank you.

Ms. DORAN. Tier 1's do not necessarily have to be publicly posted. It is up to——

Mr. JOHNSON. Okay. Well, now, that is fine. That may be true in some States.

Ms. DORAN. Right.

Mr. JOHNSON. In other States, it may not be true.

But it is also true that just an online chat with someone—between persons talking about sex, and one person to the conversation is actually a child posing as an adult, that can be an offense that renders one subject to placement on that sex offender registry. Even sex between, say, a 17-year-old and a 15-year-old, consensual, requires placement on the sex offender registry.

Now, I see you are shaking your head, but I will tell you, being a criminal defense lawyer for 27 years before I became a congressman, I handled many cases involving allegations of misconduct involving sex. And so I know what I am talking about in Georgia.

Even when you are placed on this sex offender registry, you cannot live within, say, 500 feet of a child or of a school or of a playground or of your neighbor's backyard pool, where there are children who may congregate. And so, therefore, you have to establish a place somewhere, 500 miles from nowhere, where there are no children as the only place for some people to live.

Now, I want you to answer this question for me. Is there anybody here who has any objection to, instead of applying rigid sets of Federal law to an offense, compelling placement on a registry——

Mr. SENSENBRENNER. The gentleman's time has expired.

Mr. JOHNSON [continuing]. That you would not support an amendment——

Mr. SENSENBRENNER. The gentleman's time has expired.

Mr. JOHNSON.—that would enable a judge, based on the facts that——

Mr. SENSENBRENNER. The gentleman will suspend. His time has expired, including the extra 20 seconds.

The gentleman from Pennsylvania, Mr. Marino.

Mr. JOHNSON. Could they answer the question, sir?

Mr. SENSENBRENNER. The gentleman used up all of his time.

The gentleman from Pennsylvania, Mr. Marino.

Mr. MARINO. Mr. Chair, I yield my time at this point.

Mr. SENSENBRENNER. Okay. The gentleman from Texas, Mr. Poe.

Mr. POE. Thank you, Mr. Chairman.

Thank you for being here.

Back in 2005, I was one of the several that helped write the Adam Walsh Child Safety Act. I think it is a good piece of legislation. At that time, we were concerned about some of the horrific crimes that were being committed in the United States. For some reason, in that year and subsequent years, there was almost an epidemic of young children being kidnapped by sex offenders, previous sex offenders, and taken throughout the United States, and criminals continued their criminal ways.

I want to thank Ed Smart for being here today, and my good friend, Mark Lunsford, as well. Mark, like you, I have a photograph of your daughter in my office, and I will continue to do so for as long as I am in Congress.

Because of the crimes committed against the Smart family and Jessie Lunsford, we saw a need to try to keep up with these child molesters. When they commit a crime in one State, they may register in that State, and then they flee to another State to continue their criminal ways. That was the purpose of the Adam Walsh Child Safety Act.

If it needs to be tweaked to refine it more, let's tweak it. But let's make sure that the law is enforced.

A person who is a registered sex offender, according to our court system, does not have a constitutional right to be anonymous anymore. I agree with that provision. There is no one that values privacy more than me, but, in this case, a person, once they choose to commit a crime against America's most innocent, we need to know who they are and we need to have them on a registry. If we need to fix it for juveniles, that is a different issue.

I want to address some questions to Ms. Hylton and then to you, Ernie Allen.

Ms. Hylton, do you think that the law, the Adam Walsh Child Safety Act, is a necessary tool to protect children, our society, the Adam Walsh Child Safety Act?

Ms. HYLTON. Yes, sir.

Mr. POE. Why?

Ms. HYLTON. It allows us the opportunity, within the Federal system, to provide our assets and our ability to reach further across the Nation in the apprehension of noncompliant offenders and also violent offenders.

So, as you know, at the State and local level, they don't always have those resources. By integrating the U.S. Marshals Service into the process through the Adam Walsh Act, it allows them to provide their information to us and us to provide our assets and our knowledge and our tracking abilities to quickly apprehend these individuals and protect our children. There is no doubt about it.

Mr. POE. Mr. Allen, thanks for your work in missing and exploited children. It is a noble cause, to take care of America's kids.

What do you think about the Adam Walsh Child Safety Act and what Congress should be involved in, or not involved in, in this area?

Mr. ALLEN. Judge Poe, we think it is incredibly important. The reality is, 6 years ago, 5 years ago, and today, we still face a wide range of disparity from State to State in terms of existing law. And there is no question but that the most serious offenders take advantage of those gaps.

The goal of the Adam Walsh Act was to create a system where there is far greater consistency from State to State and to provide a reasonable Federal role. We think the Marshals Service is doing that. You heard Director Hylton's numbers. We are identifying these traveling offenders and bringing them to justice.

I recognize—Representative Colloton made a good point—that there are States that have been out there doing important work in this space. The oldest sex offender registry in this country is California's, which was created in 1947. This is not new law; this is not a new concept. The goal is simply to eliminate the gaps.

One of the reasons we still estimate the number of noncompliant offenders is that many States, maybe most States, still don't know how many of their registered sex offenders are noncompliant. Because what we saw was a situation in which offenders were registering by mail without that, kind of, personal presence.

So we absolutely believe in the law. We think clearly that there has been a process to reach a reasonable level. We think the Attorney General's guidelines on the juvenile provision, which eliminate adjudicated juveniles being on the public registries and Web sites, we think it is a reasonable step forward. But it doesn't mean that there aren't serious offenses being committed by juvenile sex offenders who are starting when they are very young.

Mr. POE. Thank you.

Mr. Chairman, I yield back.

Mr. SENSENBRENNER. Thank you.

The gentlewoman from California, Ms. Chu.

Ms. CHU. Thank you, Mr. Chair.

I address this question to Ms. Doran and then to Mr. Allen.

I do come from California, which was, indeed, the first State to establish the sex offender registry, back in 1947. Since then, we have made great advances, and we have established the California Sex Offender Management Board, which came from a bill that I wrote when I was in the State legislature. What it does is bring together law enforcement, judicial officers, probation officers, treatment professionals, and advocates together to fashion a comprehensive way of dealing with sex offenders and actually reducing recidivism on a more comprehensive basis.

And these are on a variety of variables. They are basically the risk assessment that is done for these variables that have high correlation to sexual recidivism, such as criminal history, victim profile, and age at the time of offense, to determine an offender's risk of recidivism.

But the Adam Walsh Act bases the offender's crime only on conviction and not on any kind of risk-assessment score. So I believe that we have a superior registration system in place.

And I want to know, what are the States' rights in a situation like this? We don't want to replace our superior system with the Adam Walsh system. We have put a lot of time and a lot of expertise into a system that will actually reduce recidivism.

Ms. Doran?

Ms. DORAN. Thank you for your question.

The California system, as with most of the States that use risk assessment, is not inconsistent with SORNA's purposes. Yes, SORNA does require a conviction-based offense for their initial reg-

istration and tiering. But risk assessment can be used and is not incompatible with SORNA for purposes of public notification, treatment, supervision, and the other uses that people and States use risk assessment for.

There has been a lot of confusion about that among the States, and we did issue a clarification document entitled, "An Implementation Document on the Uses of Risk Assessment Consistent with SORNA." And we are in contact with California and hope that we can move forward on some of those issues, as well as their information-sharing that they are working on.

Ms. CHU. Well, I would like to follow up on that, because the California Sex Offender Management Board has recommended that California not come into compliance with the Adam Walsh Act. And the reason is not only what I have just mentioned, we believe we have a superior system, but also the monetary situation is utterly ridiculous.

The cost for implementation of the Adam Walsh Act would be $21 million to probation for conducting presentencing record checks, $10 million for local law enforcement agencies to conform with changes in frequency of registration requirements; $770,000 in a one-time cost to the attorney general's office to re-tier the registered offenders.

This amounts to $32 million, and that doesn't even calculate the cost of an additional incarceration. But the amount that we would get from the JAG Byrne funds is $2 million. So $32 million we would lose; $2 million we would gain.

What is the point to this?

Ms. DORAN. Well, I would also add that the responsibility to implement is an ongoing responsibility every year. So, unfortunately, that penalty will be applied each and every year that California or any other State doesn't come into compliance with the Adam Walsh Act.

And I am glad that you brought up the cost. There has been a lot of information given on cost, as well. If you would like me to expand a little bit on what the SMART Office has been able to learn about the true cost of implementation.

Ms. CHU. Well, you are saying that California would comply and that there some State rights. You are saying that there was confusion and that now they will qualify. But are you saying, then, that they would qualify for these JAG Byrne funds?

Ms. DORAN. If they were to substantially implement. California would need to work with the SMART Office and submit their legislation and their substantial implementation packet to move forward.

And we are happy to do that with California. We have actually made more in-person visits to California than any other State, attempting to work with them on implementation of SORNA. And we look forward to continuing to do that with California.

Ms. CHU. Okay.

Mr. Allen, do you have any comment on this?

Mr. ALLEN. I think the only point, Congresswoman, that I would raise is that, as I understood the debate at the time of the Adam Walsh Act, a number of States were doing some variation of risk assessment, but they were all over the place. And my under-

standing is that bipartisan leaders of the Congress concluded that the Adam Walsh Act was intended as a floor, as a minimum set of steps that States needed to take. And the reality is that—I think it was felt that the best predictor of future behavior is past behavior. So I think that is why that was used.

But, as Ms. Doran points out, it does not preclude States from applying and using risk-assessment tools as long as they are substantial and meaningful.

Mr. SENSENBRENNER. The gentlewoman's time has expired.

The gentlewoman from Florida, Ms. Adams.

Mrs. ADAMS. Thank you, Mr. Chair.

Ms. Doran, I have some questions, but you wanted to expound on the cost, and I am curious about that.

Ms. DORAN. Sure, absolutely.

The cost of SORNA really, for the jurisdictions, can be divided into two major categories. One is their start-up costs that they will be required to do, mainly their information technology infrastructure and reclassification, any costs that are associated with that. And then they have their ongoing or their maintenance costs that are associated with implementation of SORNA, which is mostly in the category of personnel because, for many jurisdictions, depending on their reclassification, they will need additional personnel, additional equipment to handle additional check-ins and probation and supervision.

But what we have learned so far—we have gotten actual numbers from one State that has implemented. And Ohio's number for start-up costs for implementation was a little over $400,000. Now, that doesn't include their ongoing maintenance costs, and Ohio is keeping us informed about that as they move forward.

Mrs. ADAMS. Thank you.

And I have heard a lot about the risk-assessment tool and how it is used. How long have they been using these risk-assessment tools? I know California has had one for a while. But how are they tested? What is the research on it?

Can anyone answer that?

Ms. COLLOTON. Sure. The LSIR, the level of service risk assessment, is used by most States to guide who is a high risk at recidivating and then who isn't, and to guide how much time you are going to put in monitoring them, what sort of treatment, and that kind of thing. And it looks at 20 different factors. It is a test. And it is a dynamic test, because it goes to things like what are their leisure activities, you know, what sort of mental health background had they had, substance abuse, et cetera. It combines that.

And what is so misleading and a problem when we are making these changes for the Adam Walsh Act is that, that is how we manage offenders. We manage them based on dynamic risk factors. And we have very limited resources, so we use those to determine how much of a parole officer staff we put on it, all the rest.

But now what we will put on the public registry will just be the plea bargain that they got, the offense that they got convicted of. So that somebody with a low-level sex offense may be a very high risk—may be a real danger to our children. And what Adam Walsh requires and where we need to change that still and give us a little more time then is allow those States who wish to to have their

public notification relate to the risk, the same risk that we supervise on, rather than just the name of the crime, you know, the level of the crime that they happened to be convicted of in the plea bargain.

So we are absolutely on the same page with Adam Walsh on the public registry of these sex offenders. The national portal is critical. But we absolutely believe that we need at least another year and some supplemental change for risk assessment to make this really work.

Because, just like California, most States have spent a lot of time on their registries. What I was trying to say to Mr. Gowdy is, we care about the children too. That is why most of us—maybe not as early as 1947, but we have put a lot of time into the whole procedures we have in our sex registries and the way that the sheriff's office uses them.

I would like to say one other thing, if I could, on the money that has been spent by the Justice Department. What they are doing in Kansas, as an example, is we have the national portal software all installed. That is not a problem. That is State to State. But what really matters is county to county, sheriff's office to sheriff's office, in the 105 counties in Kansas.

To do that, SMART has also created a piece of software called the SORT software. But they have given us a $300,000 grant so that we can tie the technology at each of the sheriff's offices together in the State, so when a sex offender changes employment or travels or changes jobs, we can notify. And, of course, if he absconds, we can notify. It is that money and the grant money within the State that becomes very important for monitoring, as well.

I just wanted to put that in because I don't think——

Mrs. ADAMS. Thank you. I am about to run out of time.

And as someone who just came out of the Florida legislature and was involved as a cosponsor of the Jessica Lunsford Act and actually worked with the legislature last year in Florida to come to substantial compliance under the Adam Walsh Act, I am concerned that we are, you know, now getting to a level—January of this year, we are giving the States that information. And it seems like it has been a very long time coming, and the States are having a hard time complying. But, at the end of the day, we need to protect our children.

Coming from a State where the capital is about 20 minutes from the State of Georgia, I recognize from law enforcement background that these offenders do travel across State lines.

Mr. SENSENBRENNER. The gentlewoman's time has expired.

The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Mr. Chairman, let me thank you for the hearing, and let me thank the Ranking Member.

I remember 2006, when this bill was passed, and remember how hard we worked. And we all know John Walsh, and we know his passion. I just couldn't fathom letting him down and disappointing him, not because he is a person that would not override difficulties, but because this is something that has been constructed with not only tears but concerted thought processes.

So let me begin with the Justice Department. And I just can't fathom why we took so long to get the basic information, as I un-

derstand, the regulatory scheme or structure to the States. And if you have already said, please just brief me as to why it took so long.

Ms. DORAN. Are you referring to the supplemental guidelines that were just issued?

Ms. JACKSON LEE. That and—yes.

Ms. DORAN. The supplemental guidelines that were just issued in 2011 were really the culmination of a great deal of work from the States, from the jurisdictions, from the SMART OFFICE.

The SMART Office, I would say as early as 2009, did a really comprehensive review of what the barriers were, why States and tribes were having difficulty coming into compliance. And there were obviously a few large barriers. And we met with many of the national organizations—the National Criminal Justice Association, National Congress of American Indians, National Conference of State Legislators—as well as we met with Mr. Walsh himself and the Surviving Parents Coalition. And we really tried to work toward the issues that were causing the most difficulty for the States and the tribes.

Ms. JACKSON LEE. And what did you consider were the most difficult ones?

Ms. DORAN. We considered the most difficult ones to be the juvenile issue, the juvenile registration and notification issue. And so, within the supplemental guidelines, we did what we could, underneath the Attorney General's authority and discretion, to allow States the discretion not to post those names publicly.

Under the retroactivity issue——

Ms. JACKSON LEE. And that is if you were a juvenile having perpetrated an act?

Ms. DORAN. That is correct. A juvenile that would have to register under SORNA——

Ms. JACKSON LEE. Right.

Ms. DORAN [continuing]. Exactly—for a serious sex offense.

And then under retroactivity, what we did was we limited the scope that States would have to go back to in order to recapture, and we limited that to felony convictions, as well as those that were already incarcerated or under probation or parole. So we limited that scope for the jurisdictions, as well.

Ms. JACKSON LEE. And, at the time that the law was passed, do you know how quickly—before you found the need for resolving some of the most difficult questions, did you have a regulatory scheme after 2006 that got to the States quickly?

Ms. DORAN. The guidelines were issued in July of 2008.

Ms. JACKSON LEE. Okay, so it was still 2 years.

Ms. DORAN. That is correct.

Ms. JACKSON LEE. And that is a challenge.

Let me just ask, if I can, Ernie, if you would—you worked through this. You know the horrific circumstances that have occurred. There are some elements that I will just raise with you on the juvenile question.

You know, there are some cultures where marriage occurs before 18. And there were some issues regarding whether those juveniles—how we actually treat them if we register them and they

are, in fact, able to be rehabilitated. I just want you to reflect on that.

But, more importantly, I want you to reflect upon how important it is to stay the line on this legislation and your sense of the plea by States that it is just too difficult.

Mr. ALLEN. Well, first, Congresswoman, on the juvenile provision, we are enthusiastic supporters of the Attorney General's supplemental guidelines. I think it is infinitely reasonable for serious juvenile offenders over the age of 14 to be registered but not be subject to inclusion on the public databases.

We believe in the rehabilitative ideal of the juvenile courts, the juvenile justice system. But the reality is, the evidence proves—one of the leading researchers talked about the myth of the dirty old man. The typical offender in child molestation cases starts very young.

Ms. JACKSON LEE. Okay.

Mr. ALLEN. So it is important to identify, to rehabilitate, to direct treatment resources. But we think the Attorney General's accommodation on that is reasonable and is going to enable a lot of States to become compliant.

Ms. JACKSON LEE. Let's go to my next two because of the timing.

Mr. ALLEN. Yeah, the next part is, we see real progress. States, I think largely because of the supplemental guidelines, our sense, as Ms. Doran has indicated, is that States are enacting law. They are moving toward compliance. And we think there is going to be a critical mass in a very short period of time.

Now, Representative Colloton's points about timing, I think, have real validity, and that is something Congress has to grapple with. But we think it is important to stay the course, to implement this. And we think there are going to be a significant number of States compliant in a very short period of time.

Ms. JACKSON LEE. Well, I agree——

Mr. SENSENBRENNER. The gentlewoman's time has expired.

The gentleman from Florida, Ms. Wasserman Schultz.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman.

First, I want to recognize Ed Smart and Mark Lunsford and the other members of the Surviving Parents Coalition that are in the audience, and appreciate their advocacy.

My question is for Dawn Doran. I appreciate your testimony on sex offender registration. And I am quite proud, along with my colleague, Ms. Adams, that our home State is fully compliant. But as we discuss the reauthorization of the Adam Walsh Act, I want to focus on civil confinement, which is another provision of the law.

Now, the representative from Kansas, I am sure, is familiar with the civil confinement provisions. They have a State statute that went all the way to the Supreme Court and was upheld in 1997 and was really a model law for the rest of the country. There are now 19 States that have civil confinement laws on the books. And because these kinds of crimes are more often committed at the State level, that makes sense. But there is also a general consensus that most child sex offenders are not, quote/unquote, "curable." And there really needs to be a priority made in ensuring that, following the expiration of a criminal sentence, that there is a way to keep

these individuals who are very, very likely to re-offend confined, with the proper review that civil confinement statutes require.

With Chairman Sensenbrenner's help, I was able to include in the Adam Walsh Act a grant program that provided for incentives for other States to enact civil confinement provisions under certain requirements. And Section 301(d)of the law required the Attorney General to submit a report to Congress at the end of each year, beginning in 2008, to inform us about the progress that States were making on adopting civil confinement statutes of their own and the rate of sexually violent offenses in that provision.

Can you tell me whether that report was ever filed in any year?

Ms. DORAN. My understanding, unfortunately, is that the civil commitment portion of the grant program was never appropriated any funding. And, therefore, OJP was not issued any grant funding in that area.

Ms. WASSERMAN SCHULTZ. Okay. Well, let me read to you from the statute, which does not say anything about the report being contingent upon funds being appropriated. It is Section D. It says, "Attorney General reports not later than January 31st of each year, beginning with 2008. The Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the progress of jurisdictions in this section and the rate of sexually violent offenses for each jurisdiction."

There was $87.3 million appropriated for the entire Adam Walsh Act over 3 years. There is nothing in the language that requires that report to be tied to appropriations.

Is the Department of Justice in the habit of ignoring Congress's direction?

Ms. DORAN. Well, the civil commitment issue is outside of SORNA and outside the scope of the SMART Office. But I will certainly have that information given to you as soon as the hearing is concluded.

Ms. WASSERMAN SCHULTZ. Okay, well, I mean, your answer speaks volumes.

Mr. SENSENBRENNER. Without objection, the information will be included in the record.

[The information referred to follows:]

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 5, 2011

The Honorable Debbie Wasserman Schultz
U.S. House of Representatives
Washington, DC 20515

Dear Congresswoman Wasserman Schultz:

During the February 15, 2011, hearing before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security entitled "The Reauthorization of the Adam Walsh Act," you asked Dawn Doran, Deputy Director of the Department's Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office, why the Department had not issued a report on Section 301 of the Act. This section authorizes a grant program for "the purpose of establishing, enhancing, or operating effective civil commitment programs for sexually dangerous persons."

As you know, Congress has never provided funding for the grant program authorized by Section 301. While Section 301(d) of the Act provides that "the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the progress of jurisdictions in implementing this section and the rate of sexually violent offenses for each jurisdiction," the Department concluded that the report was not required in the absence of appropriations for the grant program.

We hope this information is helpful. Thank you for your continued commitment to protecting communities from sex offenders. Please do not hesitate to contact this office if we can provide additional assistance regarding this, or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc: The Honorable Lamar Smith
The Honorable John Conyers, Jr.

Mr. SENSENBRENNER. The gentlewoman may proceed.

Ms. WASSERMAN SCHULTZ. Thank you so much, Mr. Chairman. And I can appreciate that, in 2008, from the 2007 CR, we had a CR and that there were not substantial appropriations provided for the Adam Walsh Act in general. I was a Member of the Appropriations Committee at the time. And, to be honest with you, I lament that the Adam Walsh Act was significantly underfunded overall.

But the language in the statute clearly says that the Department of Justice was supposed to issue a report. It should have been a

priority to issue that report annually since 2008 regardless of whether the appropriations were made. So I look forward to hearing back from you on where you are going to go from here, because I would expect that reports would be generated.

Thank you, Mr. Chairman.

Mr. SENSENBRENNER. Thank you——

Ms. JACKSON LEE. Would the gentlelady yield?

Ms. WASSERMAN SCHULTZ. If I could yield to the gentlelady from Texas.

Ms. JACKSON LEE. Thank you very much. And I thank you for your service, as well, Congresswoman.

Quickly, Mr. Allen, I just wanted to finish your point about your believability in States being able to get this done. I think what you were saying is, you expect that there is go to be, sort of, a synergism of everybody rushing. So, therefore, should we not keep the pressure on? There are so many vulnerable children. I am just trying to hear where you are on this situation.

Mr. ALLEN. Congresswoman Jackson Lee, I absolutely believe we need to keep the pressure on and stay the course. I think States have been provided the latitude to come into compliance. I am hopeful that there will be a significant group of States that become compliant quickly. And I think, once there is critical mass, there will be significant pressure for the rest of the States to join in.

Ms. JACKSON LEE. I agree with you, and I thank you and yield back.

Mr. SENSENBRENNER. The time of the gentlewoman from Florida has expired.

I would like to thank all of the witnesses for giving us some extremely important information as we consider reauthorization of the Adam Walsh Act.

I thank my colleagues for their active participation in the hearings.

The gentleman from Virginia has a unanimous-consent request.

Mr. SCOTT. Thank you, Mr. Chairman.

I ask unanimous consent that the testimony by Nicole Pittman, a juvenile justice policy analyst attorney for the Defender Association of Philadelphia, be included in the record.

Mr. SENSENBRENNER. Without objection.

[The prepared statement of Ms. Pittman follows:]

WRITTEN TESTIMONY FOR THE RECORD OF THE HEARING ON "THE REAUTHORIZATION OF THE ADAM WALSH ACT"

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, & HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELTH CONGRESS

TUESDAY, FEBRUARY 15, 2011

BY

NICOLE PITTMAN, ESQ.
Juvenile Justice Policy Analyst Attorney
Defender Association of Philadelphia

1441 SANSOM STREET STE. #1038 PHILADELPHIA, PA • 267.765.6766 • npittman@philadefender.org

CHAIRMAN SMITH, CHAIRMAN SENSENBRENNER, RANKING MEMBER CONYERS, RANKING MEMBER SCOTT, AND ESTEEMED MEMBERS OF THE SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY:

I am honored and pleased to submit written testimony for the official record for the February 15, 2011 Subcommittee Hearing on "The Reauthorization of the Adam Walsh Act."

My name is Nicole Pittman. I am a National Juvenile Justice Policy Analyst Attorney for the Defender Association of Philadelphia. For the past five (5) years, I have served as an expert on the juvenile portions of the Adam Walsh Act's *Sex Offender Registration and Notification Act* (hereinafter referred to as "SORNA").

Current Status of SORNA Implementation

In an effort to standardize registration systems, the United States Congress passed the Adam Walsh Child Protection and Safety Act ('Adam Walsh Act") in July 2006. Title I of the Adam Walsh Act is the *Sex Offender Registration and Notification Act* (hereinafter referred to as "SORNA"). SORNA provides a set of federal guidelines that will require jurisdictions to drastically change their sex offender registration and notification systems. Most notably, under SORNA juveniles adjudicated delinquent of certain serious sexual offenses are treated in the same manner as adult sex offenders, and must register with local law enforcement. In addition, information about them can be released to the public.

The initial deadline for states to comply was July 27, 2009. SORNA originally gave jurisdictions three years from the date the Act was signed by President Bush, July 27, 2006, to comply with the provisions set forth in SORNA. Then in May 2009, the deadline was extended to July 2010 when US Attorney General Eric Holder issued a one-year blanket extension delaying the implementation date of SORNA to give states and the federal government additional time to work out the problems with the Act.

Nearly five years after the Act was signed into law, 7 out of the 243 jurisdictions have been deemed, by the US Department of Justice, to be in "substantial compliance" with SORNA.[1] The seven jurisdictions (four states, one territory, and two tribes) are

[1] United States. Department of Justice, Office of Justice Programs. *Department of Justice works with Jurisdictions to Comply with SORNA*. |Washington, DC:| January 11, 2011. See http://www.ojp.usdoj.gov/newsroom/pressreleases/2011/SMART11053.htm

Delaware, Florida, Ohio, South Dakota, Guam, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes and Bands of the Yakama Nation. The remaining 236 other registration jurisdictions (46 States, District of Columbia, Puerto Rico, American Samoa, Virgin Islands, the Northern Mariana Islands, and Federally funded Native American Tribes) have requested and received extensions to comply.[2]

The new deadline for state compliance is July 27, 2011. With five (5) months remaining before the final deadline, several states have already signaled that they may still be unable to implement SORNA. Nonetheless, states that fail to comply with the Federal SORNA in a timely manner will forfeit 10% of their Byrne Memorial Justice Assistance Grant (JAG) Omnibus Crime federal funding.

Despite their best efforts to comply with Federal SORNA Guidelines, State Legislators are throwing their hands up in frustration, stating that compliance with SORNA would undo work to narrow sex offender registries to only dangerous sexual offenders and would be too costly.

After consulting on SORNA implementation in forty (40) states, I have learned that many jurisdictions are considering NOT adopting SORNA. The most commonly cited barriers to implementation are that the federalized, offense-based system of registration and notification; (1) is extremely **costly** (2) is **ineffective** and will do very little, if anything, to protect communities from sexual assaults, and (3) the **inclusion of juvenile adjudications on an adult sex offender registration system is tragically flawed**, poor public policy, converse to evidenced-based science on juvenile sexual offending behavior and contrary to the rehabilitation of youth.

This testimony will focus predominately on SORNA implementation as it relates to juveniles.

THE "ASKS"

After considerable research, tireless travel to nearly every state in the nation, and candid conversation with our country's most respected and talented policymakers, I respectfully ask;

[2] United States. Department of Justice, Office of Justice Programs. *Justice Department Announces Seventh Jurisdiction to Implement SORNA*. [Washington, DC:] January 20, 2011. See http://www.ojp.usdoj.gov/newsroom/pressreleases/2011/SMART11054.htm

1. For a **blanket two year extension, until July 27, 2013**, to allow federal and state legislators to work together to resolve some of the problems experienced and anticipated by SORNA implementation, and

2. To start talks with the United States Congress, and the Department of Justice to consider **amending juveniles out of the SORNA**, and

3. Look at what is entailed for US Congress to commission a **Blue Ribbon Panel on Juveniles** to closely examine juvenile sexual offending behavior and how, if at all, juveniles should be included in sex offender registration and notification legislation.

1. THE NEED FOR A BLANKET EXTENSION

Despite the admirable and tireless efforts of the SMART Office[3], under the tremendous leadership of Director, Linda Baldwin, it is still unlikely that the 236 remaining jurisdictions will come into compliance by July 2011.

There is a growing consensus on the state level that the deadline for compliance should be extended even further, *at least* another two (2) years, until 2013, to allow federal and state legislators to work together to resolve some of the problems experienced and anticipated by implementation.

BARRIERS TO SORNA IMPLEMENTATION

I attended the last Subcommittee Hearing on SORNA, entitled the "Barriers of SORNA Implementation". At this Hearing, held nearly two (2) years ago on March 9, 2009, then Chairman Robert C. "Bobby" Scott, eloquently noted that[4];

> The deadline for compliance by States is July 2009, and to date not a single state has been found in compliance . . . Now, there have been legal challenges to the constitution of SORNA that either have or may have the impact on the ability of States and others to comply with their requirements. We need to know about these challenges. It is certainly unfair to punish a State whose court has prevented it from implementing SORNA. If certain portions of SORNA have been found to be unconstitutional by courts, we need to know so we can address that problem . . . As States approach the

[3] S.M.A.R.T. stands for the Office of Sentencing, Monitoring, Apprehending, Registering, and Tracking. The branch of the Department of Justice Office's Office of Justice Programs charged with implementing SORNA in all jurisdictions.

[4] US House Judiciary Subcommittee on Crime Hearing on the "Barriers to SORNA implementation, 111th Congress (March 9, 2010) (Opening Remarks of Chairman Robert "Bobby" Scott).

> deadline for implementation; some are looking hard at the cost of implementation.[5] Some have estimated that it will cost California at least $37 million to implement SORNA, and the Byrne Grant it might lose if it does not implement SORNA will be approximately $2 million.

In addition to these implementation and operational costs, there are costs of litigation. For example, the State of Nevada passed a new sex offender registration law in an attempt to comply with SORNA. The constitutionality of these laws was challenged in court. The Federal District Court found that these new State laws, which were retroactive, violated the ex post facto, double jeopardy, due process, and Contract Clauses of the Constitution and permanently enjoined Nevada from enforcing its laws. Other courts, such as states deemed to be in compliance with SORNA (South Dakota, Florida, Ohio, and Delaware) have hundreds of ongoing challenges to the application of SORNA.

At least six Federal District Courts have found SORNA to be unconstitutional on the grounds that Congress exceeded its authority under the Commerce Clause. No doubt these cases will be appealed. In fact, The U.S. Supreme Court granted certiorari in the case of *USA v. Juvenile Male* to review the 9th Circuit's determination that SORNA violates the Ex Post Facto Clause as applied to individuals who were adjudicated delinquent prior to SORNA's enactment.[6]

These are but a few examples of the hundreds of legal challenges that have been made in both State and Federal courts. The litigation costs have yet to be quantified, calculated, and added to the already exorbitant estimate to implement SORNA.[7]

There is also the question of whether SORNA is effective in protecting our children and communities? Does a registration system based on *crime of conviction*, instead of *risk of reoffending*, help or harm public safety?

The research seems to indicate that an offense-based registration system, like SORNA, will cast an overly-wide net that will tragically engulf nearly all adolescent sexual behaviors, including those pubescent-like, exploratory behaviors committed largely out of curiosity. Under SORNA, our nation's children will be forced to register for life and they will be unduly stigmatized for displaying normative adolescent sexual behavior.

---

[5] Supra.

[6] United States v. Juvenile Male, 590 F.3d 924 (9th Cir. Mont. 2010), *question certified to Montana* United States v. Juvenile Male, 560 U.S. _____, 2010 U.S. LEXIS 4565 (U.S. June 7, 2010).

[7] US House Judiciary Subcommittee on Crime Hearing on the "Barriers to SORNA implementation, 111th Congress (March 9, 2010) (Opening Remarks of Chairman Robert "Bobby" Scott).

To date, the sheer numbers of sex offenders on the registries in all 50 states – an estimated 800,000-plus across the country — are overwhelming to local police departments and, at times, to the public, who may not easily distinguish between those who must register because they have repeatedly raped children and those convicted of nonviolent or less serious crimes, like exposing themselves in public.[8]

A recent article announced the release of a January 2011 report by the Texas Senate Criminal Justice Committee recommending "not to implement the Adam Walsh Act."[9] The Committee, in the Home State of Chairman Lamar Smith, cited concern that SORNA would undo all the work Texas has done with risk assessment tools to narrow the sex offender registry to dangerous sex offenders.

Today, five (5) years after SORNA was drafted . . . Nearly two (2) years after the original deadline for compliance by States (July 27, 2009) . . . and less than six (6) months before the final deadline for compliance (July 27, 2011), these compelling questions about SORNA remain completely unanswered.

At a Maryland State Legislative hearing on January 18, 2011, it was determined that "no one has done a study to determine how effective sex offender registration laws are."[10] A frustrated Official from the Maryland Department of Public Safety stated that "no one knows whether the changes in Maryland laws made last year are actually affecting public safety in a good way, or whether it's merely adding a whole bunch of requirements and bureaucratic red tape."[11] Maryland Legislators also learned that "despite their best efforts to change their laws, the State is still not in compliance with SORNA, which could be costly."[12]

2. AMENDING JUVENILES OUT OF SORNA

Even with the finalization of the Supplemental Guidelines, States such as Hawaii, Illinois, Tennessee, Pennsylvania, Montana, California, North Dakota, Idaho, Alaska, Wyoming, Oregon, Nevada, Colorado, Maryland, Connecticut, New Hampshire, Vermont, and New Mexico have expressed problems or an unwillingness to implement the juvenile portions of SORNA.

---

[8] Monica Davey, Case Shows Limits of Sex Offender Alert Programs. New York Times. September 2, 2009.
[9] Executive Summary: Effectiveness and Efficiency Reports. Senate Committee on Criminal Justice Interim Report. Submitted to the 82nd Texas Legislature. (January 2011). See http://www.senate.state.tx.us/75r/Senate/commit/c590/c590.InterimReport81.pdf.
[10] *"Sex Offender Laws Working? No One Knows: State Also Not in Compliance With Federal Law"* Baltimore News Story – WBAL Baltimore. January 18, 2011.
[11] Supra.
[12] Supra.

JUVENILES ADJUDICATED DELINQUENT SHOULD NOT BE PLACED ON AN ADULT REGISTRY

Although U.S. Attorney General Holder's additional exemptions from public Web site disclosure is commendable, the tenor of SORNA and its overall application to juveniles continues to be contrary to sound public policy and patently unconstitutional. The changes embodied in the Supplemental Guidelines do not reach the core problem facing jurisdictions attempting to implement the SORNA requirements.

The Supplemental Guidelines fail to acknowledge that juvenile offenders are **NOT** simply smaller, younger versions of adult sexual offenders. The Supplemental Guidelines explicitly state that "the change regarding public Web site disclosure does not authorize treating sex offenders required to register on the basis of juvenile adjudications differently from sex offenders with adult convictions in other respects. Whether a case involves a juvenile delinquency adjudication in the category covered by SORNA or an adult conviction, SORNA's registration requirements remain applicable."[13] Therein lies the problem with the juvenile portions of SORNA . . . Juveniles adjudicated delinquent of sexual offenses ARE VASTLY DIFFERENT than adults convicted of sexual offenses and should be treated differently.

THE RETROACTIVE REACH OF SORNA IS UNCONSTITUTIONAL AS APPLIED TO JUVENILE ADJUDICATIONS

With regard to the changes regarding the Retroactive Classes of SORNA[14], we laud U.S. Attorney General Holder's decision to modify the requirements for substantial implementation of SORNA in relation to sex offenders who have fully exited the justice system. However, after thoroughly reviewing the Supplemental Guidelines in conjunction with the SORNA guidelines, it appears that a juvenile, who was adjudicated as a sex offender at any age (even under the age of 14) and not required to register, would then have to register as a sex offender if s/he was convicted of a felony later in life (even as an adult).

This arguably means that SORNA could impose registration and notification restraints upon individuals who have since been rehabilitated and have not reoffended sexually. As it stands, the retroactive application of SORNA's juvenile registration provisions will disparately affect people of all ages – not only juveniles. Many of the affected individuals will have been adjudicated delinquent years or even decades before SORNA's enactment. Many of whom have built families, homes, and careers. For these rehabilitated individuals, sex offender registration and reporting threatens to disrupt the

[13] Department of Justice, Office of the Attorney General, OAG Docket No. 134; AG Order No. 3150-2010 – Public Comments to the Supplemental Guidelines for the Sex Offender Registration and Notification Act (SORNA).
[14] Supra. Section IV.

stability of their lives and to ostracize them from their communities by drawing attention to decades-old sex offenses committed as juveniles. The retroactive application of SORNA's provision requiring registration and reporting by former juvenile offenders imposes immense burdens, not only through onerous in-person registration and reporting requirements, but, more important, through the publication and dissemination of highly prejudicial juvenile adjudication records of individuals who have committed no offenses since their adolescence. On September 10, 2009, the Ninth Circuit in United States v. Juvenile Male, ruled that this retroactive application of SORNA's juvenile registration and reporting requirement is punitive and therefore violates the Ex Post Facto Clause of the United States Constitution.[15]

We can only assume that this disparate effect was the result of an oversight and that punishing rehabilitated individuals for pre-SORNA offenses was not the legislative intent of U.S. Congress and the U.S. Department of Justice in enacting the Adam Walsh Act.

JUVENILE SEXUAL OFFENDING BEHAVIOR IS VASTLY DIFFERENT THAN ADULT BEHAVIOR

SORNA's application to individuals adjudicated delinquent is based on the misconception that "juvenile offenders are simply smaller, younger versions of adult sexual offenders. That is, it is assumed that they are on a singular trajectory to becoming adult sexual offenders.[16]" This assumption is false. Juvenile sexual offending differs from adult sexual offending;

- Adolescent sex offenders are considered to be more responsive to treatment than adult sex offenders and typically do not continue re-offending into adulthood, especially when provided with appropriate treatment.[17]
- Adolescent sex offenders have fewer numbers of victims than adult offenders and, on average, engage in less serious and aggressive behaviors.[18]

---

[15] United States v. Juvenile Male, 590 F.3d 924 (9th Cir. Mont. 2010), *question certified to Montana* United States v. Juvenile Male, 560 U.S. _____, 2010 U.S. LEXIS 4565 (U.S. June 7, 2010).

16 Chaffin, M. & Bonner, B.L. 1998. *"Don't shoot, we're your children": Have we gone too far in our response to adolescent sexual abusers and children with sexual behavior problems?*, CHILD MALTREATMENT, 3(4), 314-316 (Editor's Introduction). Available at www.csom.org .

17 Association for the Treatment of Sexual Abusers (ATSA). *The effective legal management of juvenile sex offenders* (2000, March 11). Available at http://www.atsa.com/ppjuvenile.html .

[18] Burton, D. L., & Smith-Darden, J. (2000), *North American Survey of Sexual Abuser Treatment and Models: Summary Data*, The SaferSociety Foundation, Inc., Brandon, VT: SaferSociety Press.

- Most adolescents do not have deviant sexual arousal and/or deviant sexual fantasies that many adult sex offenders have.[19]
- Most juveniles are not sexual predators nor do they meet the accepted scientific criteria for pedophilia.[20]

Furthermore, adolescents do not have the same long-term tendencies to commit sexual offenses as some adult offenders.[21] A number of re-compiled youth cohort studies over the last few decades provide us with an opportunity to obtain valid and comprehensive data on patterns of juvenile sexual offenders and these youths' transitions into adulthood. The studies compiled by University of California-Berkeley Professor of Law Franklin E. Zimring explored whether juvenile sexual offenders continue their sexual offending careers into adulthood. The general pattern discovered by these studies overwhelmingly demonstrated that age and maturity appear to reduce the risk of future sexual offending in juveniles adjudicated delinquent of sex offenses. Over 98% of all children and adolescents adjudicated delinquent of sex offenses did not have an adult sex offense by age twenty-seven.[22]

Given that juvenile sexual offenders are completely different from adult sex offenders in both their development and their risk of reoffending, it is bad public policy for juveniles to be included in the same registration and notification system as adults. "Law and policy analysis concerning youth accused of sexual offenses suffers from a double disadvantage."[23] First, sex crime policy, in general, "is an area rife with strong prejudice and weak science. Second, the special circumstances of sexual offending in childhood and adolescence have been even less studied than adult offending. Sexual misconduct among children is more heterogeneous than among adults."[24]

---

[19] Miranda, A. O., & Corcoran, C. L., *Comparison of perpetration characteristics between male juvenile and adult sexual offenders: Preliminary results. Sexual Abuse*, A Journal of Research and Treatment 12, 179-188 (2000).
[20] Becker , J. V., Hunter, J. A., Stein, R. M., & Kaplan, M. S., *Factors associated with erection in adolescent sex offenders*, Journal of Psychopathology & Behavioral Assessment, 11, 353-363 (1989).
[21] Alexander, M. A., *Sexual offender treatment efficacy revisited. Sexual Abuse*, A Journal of Research and Treatment, 11, 101-116 (1999).
[22] Zimring, F.E., *The Predictive Power of Juvenile Sex Offending: Evidence from the Second Philadelphia Birth Cohort Study* (December 2006) [A configuration of a study by Sellin, T. and M. Wolfgang, *The Measurement of Delinquency*, New York: Wiley (1964); Sykes, G. *The Society of Captives*. Princeton, NJ: Princeton University Press. (1958); Tracy, P., M. Wolfgang and R. Figlio. *Delinquency in a Birth Cohort II: A Comparison of the 1945 and 1958 Philadelphia Birth Cohorts*.Washington, DC: National Institute of Juvenile Justice and Delinquency Prevention (1984) (Final Report 83-JN-AX-0006.); Wolfgang, M., R. Figlio and T. Sellin. *Delinquency in a Birth Cohort*, Chicago: University of Chicago Press (1972)].
[23] Zimring, F.E., An *American Travesty*, University of Chicago Press pg. xiv (2004).
[24] *Supra* at 86.

There is a fundamental disconnect between the view of juvenile sexual offending that animates policy in the U.S. juvenile courts and the view of sex offenders that underlies the assumptions and policy choices of SORNA. The juvenile court regards the child as neither fully mature nor set in his ways, but rather as changeable and to some extent a malleable entity. By contrast, the image of the sex offender subject to registration and notification laws is that of a person who poses a sexual threat to the community, who has fixed preferences of victims, and who is driven by all-but-inevitable urge to recidivate and is unable to rehabilitate.[25]

Ample research in developmental psychology and neuroscience that sheds new light on the differences between adolescent and adult brains. It is this science that was the basis of a series of recent landmark decisions, including a May 2010 ruling by the U.S. Supreme Court in Graham v. Florida, holding life without parole an unconstitutional penalty for juveniles convicted of non-homicide crimes under the Eighth Amendment ban on cruel and unusual punishment.[26] The majority in Graham based its decision, in part, on the scientific research into adolescent brain development first cited by the Court five years ago in Roper v. Simmons, when it struck down the death penalty for juvenile offenders on the same grounds.[27] That evidence showed that adolescents, as a group, "are more immature, more irresponsible, more susceptible to negative influences and outside pressures, and more capable of long-term change than are adults, which the court said made them categorically ineligible for the death penalty."[28] Exposing juveniles to the long term stigma and criminal consequences that adhere to adult convictions, including the often draconian consequences that follow the crime of omission for failing to register,[29] is a cruel and unusual punishment for juveniles.

MAKING SORNA CONSISTENT WITH PRESIDENT OBAMA'S EXECUTIVE ORDER TO RESTORE SCIENTIFIC INTEGRITY TO GOVERNMENT DECISION MAKING

The current Administration's goal is to ensure that we base our public policies on the soundest science.[30] The knowledge that informs our country's policies toward and legislation of juvenile sexual offending is weak; much weaker than the available information about adult offending. There is very little sound scientific research on sexual

---

[25] *Supra* at 150.
[26] Graham v. Florida, 130 S. Ct. 2011 (May 17, 2010).
[27] Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183 (2005).
[28] Hansen, Mark. *"What's the Matter with Kids Today: A Revolution in thinking about children's minds is sparking change in juvenile justice,"* ABA Journal (July 2010).
[29] *See, e.g.,* 18 USCS § 2250 (10 year maximum).
[30] Executive Order 13505—*Removing Barriers to Responsible Scientific Research Involving Human Stem Cells Memorandum of March 9, 2009*—Presidential Signing Statements Memorandum of March 9, 2009.

misconduct among children and adolescents, and what little is available goes largely ignored.

Data shows that the current design of SORNA, as it applies to juveniles, is an extremely poor method of protecting the public from "vicious attacks by violent sexual predators."[31] In fact, the poor predictive quality of SORNA may be more harmful to the public than protective, creating a false sense of security and exhausting valuable resources and limited manpower on tracking the wrong offenders.[32]

Legislation, such as SORNA, based on bad public policy will not achieve the desired end. In order to make effective laws, we must look at the facts, examine the science and seek input from qualified, experienced juvenile justice advisors.

On March 9, 2009, President Obama delivered remarks and issued an executive order lifting the ban on federal funding for stem cell research as well as a memorandum on scientific integrity. In his remarks, President Obama promised to develop a strategy for restoring scientific integrity to government decision making. To ensure that in this new Administration, we base our public policies on the soundest science; that we appoint scientific advisors based on their credentials and experience, not their politics or ideology; and that we are open and honest with the American people about the science behind our decisions: [33]

> This Order is an important step in advancing the cause of science in America. But let's be clear: promoting science isn't just about providing resources - it is also about protecting free and open inquiry. It is about letting scientists like those here today do their jobs, free from manipulation or coercion, and listening to what they tell us, even when it's inconvenient - especially when it's inconvenient. It is about ensuring that scientific data is never distorted or concealed to serve a political agenda - and that we make scientific decisions based on facts, not ideology.

Scientific data confirms that juvenile sexual offenders are completely different from adult sex offenders in both their development and their risk of reoffending. Therefore, it is bad public policy for juveniles to be included in the same registration and notification system as adults. Consistent with President Obama's order to restore scientific integrity to government decision making, it is now time

---

[31] Title I § 102 of the Adam Walsh Act of 2006 (Public Law 109-248).

[32] *See, e.g.*, "Sex Offender Registration and Notification: Limited Effects in New Jersey," U.S. Justice Department, Office of Justice Programs, National Institute of Justice (April 2009). Available at http://www.ncjrs.gov/pdffiles1/nij/225402.pdf.

[33] Executive Order 13505—*Removing Barriers to Responsible Scientific Research Involving Human Stem Cells Memorandum of March 9, 2009*—Presidential Signing Statements Memorandum of March 9, 2009.

to go back to the beginning and revise the juvenile portions of the SORNA legislation; creating a legislative scheme that supports the science.

3. COMMISSIONING A BLUE RIBBON PANEL ON JUVENILES

One important principle that must be observed in any rational registration and notification legislative scheme is to use criteria for risk and culpability that considers the developmental status of the offenders. Legislators and political leaders should require separate and specific legislative analysis and administrative rulemaking for children and adolescents. Moreover, this should require much more than adding the word "juvenile" to legislative findings or substituting the term "juvenile delinquency adjudication" for the word "conviction."[34]

In the alternative, we recommend that the definition of a "sex offense" in SORNA be amended to exclude juvenile adjudications. We also suggest that US Congress commission a **Blue Ribbon Panel** of independent experts to study the science, cost and benefits, legal ramifications, and public safety of extending registration and notification sanctions to juveniles adjudicated delinquent of sexual offenses. The Panel would also be charged with looking at alternative juvenile sex offender containment models across the country.[35] Once the Commission completes this study the information should be presented to U.S. Congress, to aid legislators as they look to amend and further hone SORNA legislation.

CONCLUSION

Juvenile advocates, behavioral scientists, prosecutors, and sex crimes detectives argue that SORNA ignores significant differences between adult and juvenile sex offenders. Research shows there are important developmental differences between juveniles and adults, and as a result, juvenile sex offenders do not pose the same public safety threat

[34] Zimring, F.E., *An American Travesty*, University of Chicago Press 153-154 (2004).

[35] One example of more rational legislation, which recognizes that juvenile sexual offending is different than adult sexual offending comes from the State of Illinois. In 2006, after years of studying and tracking trends in juvenile sexual reoffense in Illinois, Cook County States Attorney Richard Devine advanced Senate Bill 121 (Public Act 95-0658 effective 10/11/07). This Illinois law provides relief for rehabilitated youth who present no danger to the community who were required by Illinois law to be on sex offender registries for ten years or life, by allowing petitions for a court hearing for removal from the registry, two years after registration for misdemeanors, five years after registration for felonies. The American Prosecutors Research Institute supported this law as providing basic fairness; recognizing that a "one size fits all" approach to juvenile sex offenders does not work by recognizing the need to protect the safety of the public and the critical differences between adult and juvenile offenders. See Krajelis *Bethany, "Bill would let judges delete kids' names from sex registry*," Chicago Daily Law Bulletin, Vol. 153, Issue 87 (May 02, 2007).

as adult sex offenders. Moreover, even though juveniles have been on state sex offender registries and notification schemes for nearly twenty (20) years, there has never been a comprehensive study done to examine the effectiveness of sex offender registration and notification laws on the reduction of sexual offense crime rates and to analyze how, if at all, juveniles should be included on sex offender registries. However, before engaging in any discussion on whether to implement SORNA or the public safety implications, state lawmakers will need to first educate themselves on the existing juvenile sex offender registration and notification laws in place in their state and in other jurisdictions around the country.

Issuing a blanket two year extension for jurisdictions to comply with SORNA is not a sign of failure. It is more a recognition of the need for more information and research.

Since some of you last met on the issue of SORNA compliance, at a Subcommittee Hearing in March 2009, many things have change. Some of these changes make it necessary for US Congress to reconsider the implementation process and to amend portions of SORNA. Since 2009, our nation fell into a gut-wrenching economic depression, re-engaged in the war in Afghanistan, healthcare system overhauls, a landmark 20101 election that shifted the balance of power in the House, and the issuance of an Executive Order by President Obama ensuring that "scientific data is never distorted to serve a political agenda – and that [legislators] make scientific decisions based on facts, not ideology."[36]

Considering all these changes in our Nation, issuing an extension for SORNA compliance until 2013 seems more necessary than charitable, liberal, or lenient.

May I suggest that we take a look back in recent history at other instances where additional extensions to comply were needed to ensure public safety? On April 21, 2004, former Secretary of US Homeland Security appeared before the US House Judiciary Committee in a hearing to discuss the Department of Homeland Security's request of the Congress to extend the deadlines of two sections of the Enhanced Border Security and Visa Entry Reform Act of 2002.[37] In his prepared remarks, former Secretary Ridge robustly stated that our country's people "deserve to live in safety –not in fear of terrorists, criminals and fugitives from the law. That is the charge of our open,

---

[36] Executive Order 13505—*Removing Barriers to Responsible Scientific Research Involving Human Stem Cells Memorandum of March 9, 2009*—Presidential Signing Statements Memorandum of March 9, 2009.

[37] Hearing on the Department of Homeland Security's request of the Congress to extend the deadlines of two sections of the Enhanced Border Security and Visa Entry Reform Act of 2002, 108th Congress (April 21, 2004) (testimony of Secretary of Homeland Security Tom Ridge).

welcoming nation -- a champion of freedom at home and abroad. I believe the changes we favor will help us preserve those freedoms and protect all individuals from harm."

In closing, we respectfully ask;

1. For a **blanket two year extension, until July 27, 2013**, to allow federal and state legislators to work together to resolve some of the problems experienced and anticipated by SORNA implementation, and

2. To start talks with the United States Congress, and the Department of Justice to consider **amending juveniles out of the SORNA**, and

3. Look at what is entailed for US Congress to commission a **Blue Ribbon Panel on Juveniles** to closely examine juvenile sexual offending behavior and how, if at all, juveniles should be included in sex offender registration and notification legislation.

It would be our pleasure to assist in making these changes. Thank you for the opportunity to submit this testimony in the record. We applaud the leadership of the Chairman Smith and the Members of the Subcommittee for taking the time to re-examine issues related to SORNA implementation.

Mr. SENSENBRENNER. And, without objection, this hearing is adjourned.

[Whereupon, at 11:42 a.m., the Subcommittee was adjourned.]

○